AUG 1 1 2003
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No. 02-458

In the

Supreme Court of the United States

RAYMOND B. YATES, M.D.,P.C. Profit Sharing Plan;
RAYMOND B. YATES, Trustee,

Petitioners,

v.

WILLIAM T. HENDON,

Respondent.

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

James A. Holifield, Jr.
Counsel of Record
KENNERLY, MONTGOMERY
& FINLEY, P.C.
550 Main Street
Fourth Floor
Bank of America Center
Knoxville, TN 37902
(865) 546-7311
Attorneys for Petitioners

CURRY & TAYLOR • (202) 393-4141 • HTTP://USSCINFO.COM

PETITION FOR WRIT FILED SEPTEMBER 18, 2002
CERTIORARI GRANTED JUNE 27, 2003

(Any footnotes trail the end of each document)

Case No. 96-34511

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE,
NORTHERN DIVISION,
AT KNOXVILLE

Adversary Pro. No. 98-3088
Chapter 7

IN RE
RAYMOND B. YATES,
Debtor;

WILLIAM T. HENDON, TRUSTEE
Plaintiff,

VS.

RAYMOND B. YATES, MD PC
PROFIT SHARING PLAN,
RAYMOND B. YATES, and/or
QUICK & REILLY, Plan
Administrator/Plan Trustee
Defendants.

COMPLAINT

COMES NOW the Plaintiff, William T. Hendon, the trustee herein (the "trustee"), by and through counsel, and alleges:

1. This proceeding relates to the above entitled case of Raymond B. Yates, "Debtor" - Case No. 96-34511, which is pending in this Court, the United States

Bankruptcy Court for the Eastern District of Tennessee, Northern Division, at Knoxville.

2. The Plaintiff is the duly appointed, qualified, and acting trustee in the case.

3. An involuntary petition under Chapter 7, Title 11, United States Code, was filed against the Debtor on December 2, 1996, and the order for relief was entered on February 27, 1997.

4. The first meeting of creditors was held in the case on May 13, 1997.

5. This adversary proceeding is brought pursuant to Bankruptcy Rule 7001 and Sections 547(b) and 550 of Title 11, United States Code. This is a core proceeding under 28 U.S.C. § 157(F). Jurisdiction is further based upon 28 U.S.C. § 1334(a).

6. The Defendant, Raymond B. Yates, MD PC Profit Sharing Plan, upon information and belief, may have been a qualified pension plan pursuant to the Internal Revenue Code. The current status of such Defendant is unknown. The Defendants, Raymond B. Yates and/or Quick & Reilly are, upon information and belief, the Plan Administrators/Trustees.

7. Prior to November of 1996, the Debtor incurred various loans from the Defendant, Raymond B. Yates, MD PC Profit Sharing Plan. Within ninety days prior to the commencement of this case, on November 12 and 13, 1996, the Debtor transferred to the "Raymond Yates MD PC Profit Sharing Plan," for and on account of an antecedent debt, the sum of $50,467.46, for the sole benefit of the Debtor. At the time of the transfer, the Debtor was insolvent and the effect of the transfer

enables the Defendant Plan to obtain more than it would receive under Chapter 7, Title 11, United States Code, if the transfer had not been made, and the Defendant received payment of such debt to the extent provided by Title 11 of the United States Code.

8. The trustee, through his counsel, made demand upon the Defendant for the return of the transfer by letter dated June 18, 1997.

WHEREFORE, the trustee prays that this Court make its order avoiding the aforesaid preferential transfer by the Debtor to the Defendant in the amount of $50,467.46 and ordering the Defendant to pay over to the trustee the sum of $50,467.46, plus legal interest from June 18, 1997, together with costs incurred herein, and for such other and further relief as this Court deems just and proper.

DATED: August 4, 1998.

C. MARK TROUTMAN Bar # 11712
Attorney or William T. Hendon, Trustee
McCORD, TROUTMAN & IRWIN, P.C.
Suite 1300, First Tennessee Plaza Knoxville,
Tennessee 37929
(423) 637-5252

Case No. 96-34511

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE,
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IN RE
RAYMOND B. YATES,
Debtor;

WILLIAM T. HENDON, TRUSTEE
Plaintiff,

VS.

RAYMOND B. YATES, M.D.,
P.C. PROFIT SHARING PLAN
and RAYMOND B. YATES, PLAN TRUSTEE,
Defendants.

ANSWER

Come now the Defendants Raymond B. Yates, M.D., P.C. Profit Sharing Plan (the "Plan") and Raymond B. Yates ("Yates"), in his capacity as Trustee of the Plan, by and through counsel, and file this answer to Plaintiff's Complaint as follows:

1. The Plan and Yates admit the allegations contained in Paragraph 1 of the Complaint.

2. The Plan and Yates are without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Complaint.

3. The Plan and Yates admit the allegations contained in Paragraph 3 of the
Complaint.

4. The Plan and Yates admit the allegations contained in Paragraph 4 of the Complaint.

5. The Plan and Yates admit the allegations contained in Paragraph 5 of the Complaint. Pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure, the Plan and Yates specifically admit that this action is a core proceeding under 28 U.S.C. §157(F).

6. The Plan admits that it is a qualified plan pursuant to the Internal Revenue Code. Yates admits that he is the trustee of the Plan. All other allegations contained in Paragraph 6 of the Complaint are denied.

7. Defendant Yates admits that he obtained loans from the Plan and that in November, 1996 he paid $50,467.46 to the Plan to pay off such loans. The Plan admits that it received payment of $50,467.46 from Yates. The Plan and Yates specifically deny that the payment of the funds by Yates to the Plan enabled the Plan, as a secured creditor, to obtain more than it would receive under Chapter 7, Title 11, United States Code. All other allegations contained in Paragraph 7 of the Complaint are denied.

8. Defendant Yates and the Plan admit that the trustee's counsel, Mark Troutman, demanded the return of the payment made by Yates to the Plan by letter to Defendant Quick & Reilly dated June 18, 1997.

9. Defendant Yates and the Plan deny all other allegations contained in the Complaint which have not been specifically denied herein.

AFFIRMATIVE DEFENSES

10. The funds sought by the Plaintiff are not part of Yates' bankruptcy estate, and therefore, are not subject to the avoidance power under 11 U.S.C. §547(b). The funds paid by Yates to the Plan represent a portion of Yates' interest in a qualified retirement plan and as such are excluded from his bankruptcy estate.

11. The payment by Yates to the Plan did not constitute a preference under 11 U.S.C. §547(b) because it did not enable the Plan, as a secured creditor, to receive more than it would under Chapter 7, Title 11, United States Code.

12. The return of the funds paid by Yates to the Plan as requested by Plaintiff would be in direct violation of the disbursement provisions of the Plan. Yates, as trustee of the Plan, has no authority to disburse funds from the Plan other than to a plan participant who meets certain eligibility requirements or pursuant to a qualified domestic relations order.

13. The Defendant Plan's assets are ex· mpt pursuant to T.C.A. § 26-2-104.

WHEREFORE, the Yates and the Plan pray that this Court dismiss the Complaint and award the Plan and Yates all costs incurred herein and such other and further relief as this Court deems just and proper.

Respectfully submitted this 7th day of October, 1998.

KENNERLY, MONTGOMERY & FINLEY, P.C.
By: James A. Holifield, Jr., BPR 015494
Attorney for Raymond B. Yates, M.D. P.C.
Profit Sharing Plan and Raymond B. Yates,
Trustee
P.O. Box 442
Knoxville, Tennessee 37901
(423) 546-7311

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer was mailed by first class mail, postage prepaid, to:

C. Mark Troutman, Esq..
McCord, Troutman & Irwin, P.C.
Suite 1300, First Tennessee Plaza
Knoxville, Tennessee 37901
Attorney for Plaintiff

This the 7th day of October, 1998.

KENNERLY, MONTGOMERY & FINLEY, P.C.
By: James A. Holifield, Jr. Esq. #015494
4th Floor, 550 Main Street
NationsBank Center
P. O. Box 442
Knoxville, Tennessee 37901
(423) 546-7311 - voice
(423) 524-1773 - facsimile

Exhibit 1

N. David Roberts, Jr. 012230
BAILEY, ROBERTO & BAILEY,
P.L.L.C.
P. O. BOX 2189
KNOXVILLE, TN 37901
(423) 546-3533
Attorney for the Petitioner

UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

In re Raymond B. Yates Debtor	Case No.: 96-34511 Statement of Financial Affairs
Social Security No.: 435-54-3504	Chapter 7

1. Income from employment or operation of business.

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year.

This year: 1996 Source:	Amount:	0.00
Last year: 1995 Source: 24,500 wages	Amount:	24,500.00
Previous year: 1994 Source: 222,610 Wages	Amount:	222,610.00

2. Income other than from employment or operation of business.

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case.

This year: 1996 Amount: 105,658.00
Source: Income from sale of house - Cap Gain 100,300.00 Taxation of carp. income deemed to debtor $ 1930 education benefits to daughter. $ 75 interest income; $3000 limited partnership distributions. Federal AGI 105,658.
Last year: 1995 Amount: 34,228.00
Source: IRA distributions $34,228
Previous year: 1994 Amount: 932.00
Source: Interest Income $932

3. Payments to creditors.
a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case.

See Schedule

b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditor who are or were insiders.

See Schedule

4. Suits, executions, garnishments, and attachments.

a. List all suits to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case.

Status: Lawsuit is pending.
Knox Co. Chancery Court Docket No. 124867-2

Status: Lawsuit is pending.
Hamblen Co. Chancery Court Docket No. 95-170

Status: Lawsuit vent to judgment.
Knox Co. Chancery Court Docket No. 96-130282

Status: Lawsuit vent to judgment.
Hamblen County Chancery Court Docket No. 95-231

NationsBank of Tennessee, N.A. vs. Raymond H. Yates, Knox Co. Chancery Court Docket No. 130282-3, Third National Bank of East Tennessee vs. Raymond Yates, Hamblen County Chancery Court Docket No. 95-231; First Tennessee Bank vs. Raymond B. Yates, Knox Co. Chancery Court Docket No. 124867-2, Hall XRay Company vs. Raymond B. Yates, et al., Hamblen Co. Chancery Court Docket No. 95-170.

b. Describe all property that has been attached, garnished, or seized under any legal or equitable process within one year immediately preceding the commencement of this case.

NONE

5. Repossessions, foreclosures, and returns.

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller,

within one year immediately preceding the commencement of this case.

NONE

6. Assignments and receiverships.

a. Describe any assignment of property for the benefit of creditor made within 120 days immediately preceding the commencement of this case.

NONE

b. List all property which has been in the hands of a receiver or court-appointed official within one year immediately preceding the commencement of this case.

NONE

7. Gifts.

List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient.

NONE

8. Losses.

List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case.

NONE

9. Payments related to debt counseling or bankruptcy.

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

BAILEY, ROBERTS & BAILEY, P. L. L. C.
P. O. BOY 2189
KNOXVILLE, TN 37901
(423) 546-3533

Filing fee: NONE
Attorney's fees:
Source was: See attorney fee disclosure statement
Date(s) of payment:

See attorney disclosure statement.

10. Other transfers.

List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor transferred either absolutely or as security within one year immediately preceding the commencement of this case.

See Schedule

11. Closed financial accounts.

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor

which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case.

Ray Yates MDPC Corp Acct - Hank of East Tenn. Closed late 96
Personal Checking - First Tenn Hank, Morristown

12. Safe deposit boxes.

List each safe deposit box or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case.

closed late 96 - Peoples Hank, Morristown - personal papers and used for cash safekeeping from time to time.

13. Setoffs.

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case.

NONE

14. Property held for another person.

List all property owned by another person that the debtor holds or controls.

NONE

15. Prior address of debtor.
If the debtor has moved within the two years immediately preceding the commencement of this case,

list all premises which the debtor occupied during that period and vacated prior to the commencement of this case.

Length of time at current residence:

Prior residences: NOV. 96
670 Heatherbrook Circle, Jefferson City, TN 37760

16. Nature, location, and name of business.

a. For individuals, list the names and addresses of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole
proprietorship, or was a self-employed professional within the two years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the two years immediately preceding the commencement of this case.

100% shareholder Ray Yates MDPC Corp. inactive.

b. If the debtor is a partnership, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within the two years immediately preceding the commencement of this case.

N/A

c. If the debtor is a corporation, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting

securities, within the two years immediately preceding the commencement of this case.

N/A

17. Books, records, and financial statements.

a. List all bookkeepers and accountants who within the six years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

N/A

b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

N/A

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor.

N/A

d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

N/A

18. Inventories.

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

N/A

b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

N/A

19. Current Partners, Officers, Directors, and Shareholders.

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

N/A

b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

N/A

20. Former partners, officers, directors, and shareholders.

a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

N/A

b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.
Statement of Financial Affairs

3. Payments to Creditors:

Internal Revenue Service	11-12-96	$8,900.00
Union Planters Mortgage	11-12-96	$1,534.00
Raymond B. Yates MD PC Profit Sharing Plan	11-42-96	$38,000.00
Raymond B. Yates MD PC Profit Sharing Plan	11-13-96	$12,467.46
Internal Revenue Service	11-12-96	$19,000.00

10. Transfers of Property from 12-1-95 to 12-1-96

Sold home in Jefferson County by Contract Dated October 18, 1996
Deed transferred on November 12, 1996 In Warranty Deed Book 401
Page 462 Jefferson County, Register of Deeds
Property conveyed to James and Peggy Stockwell of Plantation, FL
Property sold subject to existing mortgage of Union Planters.

Cashed in Individual Retirement Accounts (IRA) in December, 1995 and used for living expenses during 1996. Approximate proceeds $ 34,000.00

Sold boat for $ 3,000 during July, 1996. Received $1,500 in July, 1996 and $1,500 in August, 1996. Proceeds used for living expenses.

Sold two vehicles under sale/lease-back to Executive Financial Services, Inc. August 16, 1996 1992 Ford Van; August 16, 1996 1972 Triumph TR 6

N/A

21. Withdrawals from a partnership or distributions by a corporation.

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

N/A

(The penalties for making a false statement or concealing property is a fine of up to $500,00.0 or imprisonment for up to 5 years or both.
- 18 U.S.C. secs. 152 and 3571.)

DECLARATION

I, Raymond B. Yates, named as the debtor in this case, declare under penalty of perjury that I have read the foregoing Statement of Financial Affairs, consisting of 7 sheets, and that it is true and correct to the best of my information and belief.

Signature: Raymond B. Yates
Date: 9 April 97

EXHIBIT 2

Case No. 96-34511
Chapter 7/Involuntary

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

IN RE: RAYMOND B. YATES, M.D.,
Debtor.

DEPOSITION OF RAYMOND B. YATES, M.D.

February 19, 1997

APPEARANCES:

FOR NATIONSBANK:
James A. McIntosh, Esq.
900 South Gay Street
Suite 2200
Knoxville, Tennessee 37902
(423) 549-7000

FOR THE DEBTOR:
N. David Roberts, Jr., Esq.
218 Court Square Building
600 Cumberland Avenue
Knoxville, Tennessee 37902
(423) 546-3533

WITNESS:
Raymond B. Yates, M.D.
2141 Pine Mead Road
Knoxville, Tennessee 37920
(423) 694-0964

Q. How funds are invested?
A. Uh-huh.

Q. Do you get that statement monthly?
A. Yeah.

Q. I would like a copy of your statements on your retirement plan for the last 12 months.
A. I don't keep the last 12 months, but I will have the latest one or two probably. I mean, they are cumulative.

Q. Do you keep the rear end?
A. I just keep the last couple three months. I'm not good at paperwork. I don't keep a whole lot of back stuff. I mean, it is all - - it doesn't matter to me what they were worth a year ago. It matters to me what it is worth recently.

Q. When did you borrow the money from your retirement plan?
A. At different times. I think one of them was '82 or '83 and one was like '86 or '87. I think this last one was around '87.

Q. That is the $50,000 that you paid back when you sold your house?
A. Right.

Q. So that loan had been outstanding since '87?
A. Well, I mean, I have been paying it. Yeah, some of it.

Q. You have been making monthly payments?
A. No, I hadn't paid on it in quite a while. I didn't make regular payments on it, but it's about '87, '86 or '87.

Q. Until you sold your house and took the equity from your house and paid on your loans from your retirement plan, when is the next previous time that you had made a payment on that loan?
A. It's been a long time, since -- I haven't made one since I quit work. I don't know.

Q. Since March of '95?
A. Right.

Q. So when can you have me a copy of the statements that you have in your possession from your retirement plan?
A. The same time. If I have them, they will be around with these other ones.

Q. Those are provided to you by ERISA Services, correct?
A. No, actually it is Quick & Riley that have the money part of it.

Q. Quick & Riley, where are they located?
A. Across from the TVA building.

Q. Are they accountants?
A. No, it's like an investment -I'm not sure. Quick & Riley, like a small Merrill Lynch, I think.

THE WITNESS: Do you know?
MR. ROBERTS: A stockbroker company.

BY MR. McINTOSH:

Q. And that's where the investments are?
A. Uh-huh.

Q. The next one on your list is Robert Surber, S-u-r-b-e-r, storage cost, $1500. For how long have you owed him $1500?
A. It is $100 a month and the last time I paid him was in July of '95.

Q. Okay.

C E R T I F I C A T E

STATE OF TENNESSEE
COUNTY OF KNOX

I, James T. Rusk, Registered Professional Reporter and Notary Public, do hereby certify that I reported in machine shorthand the foregoing proceedings; that the foregoing pages, numbered 1 to 81, inclusive, were typed by me using computer-aided transcription and constitute a true and accurate record of said proceedings.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

Witness my hand and official seal this the 19th day of February, 1997.

James T. Rusk
Registered Professional Reporter and Notary Public at Large.
My Commission Expires: 8-3-2000.

EXHIBIT 3

Civil Action No. 130282-3

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

NATIONSBANK OF TENNESSEE, N.A.
Plaintiff,

v.

RAYMOND B. YATES, Defendant.
APPEARANCES:

DEPOSITION OF RAYMOND B. YATES
November 13, 1996

FOR THE PLAINTIFFS:
James A. McIntosh, Esq.
2200 Riverview Tower
900 South Gay Street
P.O. Box 1792
Knoxville, Tennessee 37901

FOR THE DEFENDANT: Kevin Hardin, Esq.
Butler, Vines & Babb
First American Center,
Suite 810 P. O. Box 2649
Knoxville, TN 37901-2649

A. Oh, I got it probably just a few weeks ago. I can't remember.

Q. Well, Kevin told me that one of your parents died shortly. Was it your Mom or your Dad?

A. Mom.

Q. I'm sorry to hear that.
A. Okay, I appreciate that. Thank you.

Q. Uh, how much did you inherit? Total?
A. $19,400 and something.

Q. Is, how much of it is left remaining now?
A. Uh, I think it is that balance right there, $3,333 if I'm not mistaken.

Q. Alright, what, who did you pay the, uh, the other $16,000 to?
A. Living expenses and part of IRS and uh part of it to pay interest on a note.

Q. Which note?
A. Uh, its a retirement plan note that was in default.
Q. Uh, for your qualified profit sharing plan?
A. Yeah.

Q. How much interest was there?
A. On the note?

Q. Right.
A. I can't give you exact figures. It was uh kinda of an idea. About $23,000.

Q. So you didn't pay it off?
A. Uhm, not with that no. I paid it all but I didn't pay it with that.

Q. What was the source of the rest of the balance of the money?
A. The sale of my house.

Q. When did you sell your house?
A. Uhm, I would have to look and see. Just recently. Uh, October the 18.

Q. How much did you get out of the sale of your house?
A. $245,000.

Q. You sold the house for $245,000?
A. Right.

Q. Was there a mortgage on it?
A. Yes.

Q. How much was the mortgage?
A. About a $160,000.

Q. Who was it with?
A. Union Planters.

Q. And so that left uh, $85,000.00, am I right?
A. Yes.

Q. So you netted $85,000 after the sale?
A. No, I netted $70,000. Because there were real estate fees.
Q. Okay.
A. Of about $15,000.

Q. Where is that money now?
A. Well, a good bit of it, this, went to the IRS and the rest of it went to be paid at the retirement plan that was getting in default.

Q. How much did you owe the IRS?
A. Uh, $8.9 and $19, so that is $27.9.

Q. And then, how much did you pay to the retirement plan? $23?
A. No, uh that would be $50.246.

Q. So that is the total that you paid in your retirement plan? Was $50.246.
A. Yes.

Q. Okay.
A. That's principal and interest accrued over a long time.

Q. Alright. And that is the total of $77,000, $78,000, being paid to both the IRS and the retirement plan. So you paid all of the proceeds from the sale of your house and part of your inheritance to the IRS and back to your retirement plan?
A. Yes.

Q. Uh, and your retirement plan total, including the $50,000 that you paid back in is $87,000. Is that correct?
A. Uhm, it would be, there was $36 something in it, so that would be on top of the $50 that I put in there, so if that's what that comes out to be. I'll make sure. There was $36,000 in the plan.

Q. Right, that looks to be like a, correct. But this $87,000 includes the $50,000 that you put back in.
A. Yes.

Q. And you had a note, too?

Case No. 96-34511

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE,
NORTHERN DIVISION,
AT KNOXVILLE

Adversary Pro. No. 98-3088
Chapter 7

IN RE
RAYMOND B. YATES,
Debtor;

WILLIAM T. HENDON, TRUSTEE
Plaintiff,

VS.

RAYMOND B. YATES, M.D.,
P.C. PROFIT SHARING PLAN
and RAYMOND B. YATES, PLAN TRUSTEE,
Defendants.

AFFIDAVIT OF RAYMOND B. YATES

I, Raymond B. Yates, M.D., hereby swear and affirm the following:

1. I, Raymond B. Yates, M.D., am over eighteen (18) years old and am competent to give this affidavit.

2. I reside at 2141 Pine Meade Road, Knoxville, Tennessee 37923.

3. I give this Affidavit in support of the Motion for Summary Judgment filed by the Plan and the Trustee of the Plan.

4. Raymond B. Yates, M.D., P.C., sponsors a qualified retirement plan known as the Raymond B. Yates, M.D., P.C. Profit Sharing Plan ("Plan"). A copy of the Adoption Agreement and Plan Document is attached as Exhibit A to this affidavit.

5. I am the Trustee of the Plan. See Exhibit A, Page 26.

6. The Plan is a qualified retirement plan. See Exhibit which is a copy of the IRS Determination Letter indicating that the Plan is a qualified plan pursuant to the Internal Revenue Code.

7. The Plan specifically provides that loans may be made to participants from the Plan. See Exhibit 1 of the Plan (attached as Exhibit A to this affidavit).

8. On December 13, 1989, I took a loan in the amount of Twenty Thousand Dollars ($20,000.00) from the Raymond B. Yates, M.D., P.C. Money Purchase Pension Plan ("Money Purchase Plan"). The Money Purchase Plan was merged into the Raymond B.
Yates, M.D., P.C. Profit Sharing Plan on June 19, 1992. Therefore, this loan became a loan governed by the terms of Raymond B. Yates, M.D., P.C. Profit Sharing Plan as of June 19, 1992. This loan was repaid in November of 1996. The amount paid to the Plan was $50,467.46. At all times, the loan from the Plan was considered an asset of the Plan.

9. On December 2, 1996, an involuntary petition under Chapter 7, Title XI of the United States Code was filed against me.

10. I claimed my interest in the Plan as exempt property on Schedule B of my bankruptcy filing.

11. Attached as Exhibit to this Affidavit are true and accurate documents reflecting:

a. A loan from the Raymond B. Yates, M.D., Money Purchase Plan to me in the amount of Twenty Thousand Dollars ($20,000.00), including an irrevocable pledge and assignment and Participant Loan Application.

b. Trust accounting records for the Money Purchase Plan (1990-1992) and for the Profit Sharing Plan for the Plan years beginning July 1, 1989 to June 30, 1990; July 1, 1990 through June 30, 1991; July 1, 1991 through June 30, 1992; July 1, 1992 through June 30, 1993; July 1, 1993 through June 30, 1994; and July 1, 1994 through June 30, 1995.

Further Affiant saith not.

Raymond B. Yates

STATE OF Tennessee
COUNTY OF Knox

Sworn to and subscribed before me this 31st day of 1999.
Notary Public
My Commission Expires: 4/4/99

EXHIBIT A

QUALIFIED PLANS
PROTOTYPE DEFINED CONTRIBUTION PLAN AND TRUST
ADOPTION AGREEMENT #001
STANDARDIZED
PROFIT SHARING PLAN

RAYMOND B. YATES, M.D., P.C.
(Name of Employer)

RAYMOND B. YATES, M.D., P.C. PROFIT SHARING PLAN
(Name of Plan)

Defined Contribution Basic Plan Document #01

ADOPTION AGREEMENT

The undersigned Employer by executing this Adoption Agreement hereby adopts the Qualified Plans Prototype Defined Contribution Plan and Trust of which this Adoption Agreement forms an integral part.

The undersigned Trustee by executing this Adoption Agreement hereby accepts the duties and responsibilities of this position with respect to the Prototype Plan.

Wherever the word "Plan" appears herein or in the Prototype Plan, it shall be deemed to mean the Prototype Plan as adopted by the Employer, together with all of the definitions and provisions applicable to it as elected herein.

Limitations with respect to provisions available to the Employer are set out in parentheses. Marked brackets (x) indicate the provisions which do apply to the Plan. Brackets left unmarked ( ) indicate the provisions which do not apply to the Plan. Failure to properly fill out the Adoption Agreement may result in disqualification of the Plan.

The Plan Sponsor will inform the Employer of any amendments made to the Prototype Plan or of the discontinuance or abandonment of the Prototype Plan.

Plan Name: RAYMOND B. YATES, M.D., P.C. PROFIT SHARING PLAN

Section 1. Plan Information

(a) The Employer hereby

( ) establishes the above named Plan

(X) amends, restates, and continues the above named Plan, which was originally effective on June 15, 1974,

( ) amends, restates, and continues the above named Plan, which was previously named theand which was originally effective on,

by adopting the QUALIFIED PLANS PROTOTYPE DEFINED CONTRIBUTION PLAN AND TRUST.

(b) The Effective Date of this Plan adoption or amendment shall be July 01, 1989.

(c) The Limitation Year shall be

( ) a calendar year ending on each December 31.

(X) the twelve (12) consecutive month period ending on JUNE 30, 1990.

If the Employer elects a year other than the calendar year, such period must be the same for all qualified plans of the Employer. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(d) The Plan Year shall be

(X) the twelve (12) consecutive month period which coincides with the Limitation Year.

( ) the twelve (12) consecutive month period commencing on and each anniversary thereof.

If the first Plan Year is a short Plan Year (less than twelve (12) consecutive months), the first day of the short Plan Year shall be.

(e) Three-digit number assigned to the Plan: 001 (f) This Plan

( ) is not a Paired Plan.

(X) is a Paired Plan.

This Plan is paired
with Adoption Agreement #: (X) 003 or ( ) 005

Section 2. Employer Information

Name: RAYMOND B. YATES, M.D., P.C.

Business address: P. O. BOX 1067
MORRISTOWN, TN 37814

Telephone number: (615) 587-9729

Date of incorporation or commencement of business: July 01, 1983

Federal tax identification number: 62-0893923
Employer's fiscal year end: June 30, 1990

Type of entity:
(X) Corporation

( ) Subchapter S Corporation
( ) Sole Proprietorship ( ) Partnership
( ) Tax Exempt Organization
( ) Professional Corporation
( ) Professional Association

The Employer contributes to the following additional pension or profit-sharing plans:

RAYMOND B. YATES, M.D., P.C. MONEY PURCHASE PENSION PLAN

Prior Trustee, if applicable: RAYMOND B. YATES

Section 3. Plan Administration

(a) The Trustee shall be:

( ) General Trust Company

(X) Name: RAYMOND B. YATES

Address: P.O. BOX 1067
MORRISTOWN, TN 37814

( ) Name:
Address:

(b) The Plan Administrator shall be:

(X) The Employer, ATTN: RAYMOND B. YATES

Telephone Number: (615) 587-9729

( ) Other: (specify)
Address:

Telephone Number:

Section 4. Employee Classes Excluded

The following class(es) of individuals employed by the Employer shall not be eligible to participate in the Plan:

(X) no exclusions.

( ) employees included in a unit of employees covered by a collective bargaining agreement between the Employer and Employee representatives, if retirement benefits were the subject of good faith bargaining. For this purpose, the term "Employee representatives" does not include any organization more than half of whose members are employees who are owners, officers or executives of the Employer.

( ) employees who are nonresident aliens and who receeive no earned income from the Employer which constitutes income from sources within the United States.

Section 5. Eligibility

(a) Each Employee who is employed on the Effective Date of the Plan shall be eligible to participate in the Plan upon meeting the following eligibility requirements:

(X) attained the age of 21 (cannot exceed 21).

(X) completed 1 Year(s) of Service (cannot exceed one (1) Year unless the Plan provides a nonforfeitable right to one hundred percent (100%) of the Participant's Account balance derived from

Employer Contributions after not more than two (2) Years of service in which case up to two (2) Years is permissible. In addition, if the Employer adopts the CODA permitting Elective Deferrals under the Plan, the minimum number of Years of Service required for participation in the CODA cannot exceed one (1). If the Year(s) of Service selected is or includes a fractional Year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional Year.)

If this is a continuation of a Predecessor Plan, no Employee who has been a Participant under the Predecessor Plan and who is otherwise eligible to participate in this Plan shall be excluded from participation because of failure to satisfy the above age and Service requirements.

(b) Each Employee who is first employed after the Effective Date of the Plan shall be eligible to participate in the Plan upon meeting the following eligibility requirements:

(X) attained the age of 21 (cannot exceed 21).

(X) completed 1 Year(s) of Service (cannot exceed one (1) Year unless the Plan provides a nonforfeitable right to one hundred percent (100%) of the Participant's Account balance derived from Employer Contributions after not more than two (2) Years of Service in which case up to two (2) Years is permissible. In addition, if the Employer adopts the CODA permitting Elective Deferrals under the Plan, the minimum number of Years of Service required for participation in the CODA cannot exceed one (1). If the Year(s) of Service selected is or includes a fractional Year, an Employee will not be required to

complete any specified number of Hours of Service to receive credit for such fractional Year.)

(Note: The selection of eligibility requirements in subsections (a) and (b) cannot discriminate in favor of Highly Compensated Employees.)

(c) The initial Eligibility Computation Period shall be the twelve (12) consecutive month period beginning on the Employment Commencement Date. The succeeding twelve (12) consecutive month periods shall be as follows:

( ) The twelve (12) consecutive month period beginning on each anniversary of the Employee's Employment Commencement Date.
(X) Plan Years beginning with the Plan Year in which occurs the first anniversary of the Employee's Employment Commencement Date.

(d) The Plan Entry Date shall be as follows:

( ) The Employee's date of hire.

( ) The first day of the Plan Year in which the Employee meets the Plan's eligibility requirements.

( ) The first day of the Plan Year coincident with or immediately following the date the Employee meets the Plan's eligibility requirements (note: this option cannot be selected if the eligibility requirements stated in Sections 5(a) and (b) exceed age 20-1/2 and/or 1/2 Year of Service).

(X) The first day of the Plan Year or the date six (6) months after the first day of the Plan Year coincident with or immediately following the date

the Employee meets the Plan's eligibility requirements. If the first Plan Year is a short Plan Year (less than twelve (12) consecutive months), the Entry Date(s) for the short Plan Year shall be the first day of the short Plan Year (if the short Plan Year is six (6) consecutive months or less) OR the first day of the short Plan Year or the date six (6) months after the first day of the short Plan Year (if the short Plan Year is more than six (6) but less than twelve (12) consecutive months).

( ) The first day of the Plan Year or the date six (6) months after the first day of the Plan Year or the last day of the Plan Year coincident with or immediately following the date the Employee meets the Plan's eligibility requirements. If the first Plan Year is a short Plan Year (less than twelve (12) consecutive months), the Entry Date (s) for the short Plan Year shall be the first day of the short Plan Year or the last day of the short Plan Year (if the short Plan Year is six (6) consecutive months or less) OR the first day of the short Plan Year or the date six (6) months after the first day of the short Plan Year or the last day of the short Plan Year (if the short Plan Year is more than six (6) but less than twelve (12) consecutive months).

( ) The first day of the Plan Year nearest the date the Employee meets the Plan's eligibility requirements.

Section 6. Hours of Service

Service shall be determined on the basis of the method selected below. Only one method may be selected. The method selected shall be applied to all Employees covered under the Plan.

(X) On the basis of actual hours for which an Employee is paid or entitled to payment.

( ) On the basis of days worked. An Employee shall be credited with 10 Hours of Service per day if under Section 2.33 of the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

( ) On the basis of weeks worked. An Employee shall be credited with forty-five (45) Hours of Service per week if under Section 2.33 of the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

( ) On the basis of semi-monthly payroll periods. An Employee shall be credited with ninety-five (95) Hours of service per semi-monthly payroll period if under Section 2.33 of the Plan such Employee would be credited with at least one (1) Hour of service during the semimonthly payroll period.

( ) On the basis of months worked. An Employee shall be credited with one hundred ninety (190) Hours of Service per month if under Section 2.33 of the Plan such Employee
would be credited with at least one (1) Hour of Service during the month.

Section 7. Employer Contributions

(a) The Employer shall contribute an amount for each plan year as follows:

(X) a discretionary amount to be determined annually by the Board.

( ) % of each Participant's Compensation (maximum of 15%).

( ) % of profits in excess of $ 0.00.

(b) Such contribution

( ) shall

(X) shall not

come from, and be limited to, Net Profits or Accumulated Net Profits.

(c) (Note: The following selections are optional.) Net Profits shall be defined as the amount of net income of the Employer

( ) determined before contributions to this Plan in accordance with accounting practices normally utilized by the Employer

( ) determined before contributions to this Plan in accordance with accounting practices normally utilized by the Employer and before adjustments for

( ) dividends

( ) state income taxes

( ) federal income taxes

( ) excise taxes

excluding, however,

( ) gains or losses on the sale of capital assets

( ) income or losses from the sale of marketable securities

( ) dividends from shares of publicly owned companies

( ) net proceeds of any life insurance policies held by the Employer

Section 8. Allocation of Employer Contributions and Forfeitures

(a) Active Participants.

(i) For Plan Years beginning before January 1, 1990, each Participant shall be eligible to share in Employer Contributions and Forfeitures for the Plan Year upon meeting the following requirements (note: choose one or both):

(X) employed by the Employer on the last day of the Plan Year.

(X) completed at least 1,000 Hours of Service during the Plan Year.

(ii) For Plan Years beginning on or after January 1, 1990, each Participant shall be eligible to share in Employer Contributions and Forfeitures for the Plan Year, excluding, however (note: this selection is optional):

(X) Participants who terminate employment during the Plan Year with not more than 500 Hours of Service and who are not Employees as of the last day of the Plan Year.

(b) Allocation of Employer Contributions and Forfeitures. Employer Contributions and Forfeitures

shall be allocated as follows (note: choose only one method):

(X) NON-INTEGRATED

Employer Contributions and Forfeitures shall be allocated to each eligible Participant in the ratio that such Participant's Compensation bears to the Compensation of all Participants. (Note: The additional participation requirements of Section 13.02(a) of the Plan must be met unless the Employer maintains a money Purchase or Target Benefit Pension Plan and makes the minimum Top-Heavy allocations to such Plan.)

( ) INTEGRATED

The integration level is equal to:

( ) taxable wage base (the taxable wage base is the maximum amount of earnings which may be considered wages for a Year under Section 3121(a)(1) of the Code in effect as of the beginning of the Plan Year).

( ) $ 0.00 (a dollar amount less than the taxable wage base).

( ) % of the taxable wage base (not to exceed 100%).

Employer Contributions for the Plan Year plus any Forfeitures will be allocated to eligible Participants' Accounts as follows:

STEP ONE: Employer Contributions and Forfeitures will be allocated to each eligible Participant's Account in the ratio that each Participant's total Compensation bears to

all Participant's total Compensation, but not in excess of 3% of each Participant's Compensation.

STEP TWO: Any Employer Contributions and Forfeitures remaining after the allocation in Step One will be allocated to each eligible Participant's Account in the ratio that each Participant's Compensation for the Plan Year in excess of the integration level bears to the excess compensation of all Participants, but not in excess of 3%.

STEP THREE: Any Employer Contributions and Forfeitures remaining after the allocation in Step Two will be allocated to each Participant's Account in the ratio that the sum of each Participant's total Compensation and Compensation in excess of the integration level bears to the sum of all Participants' total Compensation and Compensation in excess of the integration level, but not in excess of the maximum profit-sharing disparity rate.

If the integration level is equal to the taxable wage base, the maximum profit-sharing disparity rate is equal to 2.7%.

If the integration level is not equal to the taxable wage base, the maximum profit-sharing disparity rate is equal to the percentage determined in accordance with the table below:

If the integration level: Is more than	But not more than	The applicable percentage is:
$0	X*	2.7%
X* of TWB	80% of TWB	1.3%
80% of TWB	Y**	2.4%

*X = the greater of $10,000 or 20 percent of the TWB
**Y = any amount more than 80% of the TWB but less than 100%, of the TWB.

STEP FOUR: Any remaining Employer Contributions or Forfeitures will be allocated to each Participant's Account in the ratio that each Participant's total Compensation for the Plan Year bears to all Participants' total Compensation for that Year.

If an Employee's entry date for participation in the Plan is not the first day of the Plan Year, then the integration level

( ) shall

( ) shall not

be prorated in the Plan Year in which the. Participant enters or reenters the Plan in the ratio that the length of the Participant's participation in the Plan that Plan Year bears to the length of that entire Plan Year.

(c) Terminated Participants. (Note: These selections are optional.) Participants who do not meet the requirements of (a) during the Plan Year shall not share in Employer Contributions and Forfeitures for such Plan Year except as provided below:

(i) For Plan Years beginning before January l, 1990,

( ) if, in (a)(i), the Employer selected the first option only, then a Participant who terminates employment during the Plan Year on account of (choose as many as apply)

( ) death

( ) disability

( ) or retirement

shall be entitled to share in the Employer Contributions and Forfeitures.

(X) if, in (a)(i), the Employer selected both options then a Participant who completes 1,000 Hours of service during the Plan Year but who terminates employment during the Plan Year on account of

(X) death

(X) disability

(X) or retirement

shall be entitled to share in the Employer Contributions and Forfeitures.

( ) if, in (a)(i), the Employer selected both options or the second option only then a Participant who terminates employment during the Plan Year on account of
( ) death

( ) disability

( ) retirement

and who does not complete. 1,000 Hours of Service during the Plan Year shall be entitled to share in the Employer Contributions and Forfeitures.

(ii) For Plan Years beginning on or after January 1, 1990, if the Employer selected the exclusion option under (a)(ii), such excluded Participants who terminate employment on account of

(X) death

(X) disability

(X) or retirement

and who do not complete 500 Hours of Service during the Plan Year shall be entitled to share in the Employer Contributions and Forfeitures.

(d) Disabled Participants. The Employer may elect to make non-forfeitable contributions on behalf of Non-highly Compensated Employees who become disabled. Such contributions will be made on the basis of the compensation each such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming totally disabled.
The Employer

( ) will

(X) will not

make contributions on behalf of disabled Participants.

Section 9. Compensation; Special Definitions

Compensation shall mean all of each Participant's

(X) W-2 earnings

( ) compensation (as that term is defined in section 415(c)(3) of the Code)

which is actually paid to the Participant during ( ) the Plan Year.

( ) the taxable year ending with or within the Plan Year.

( ) the Limitation Year ending with or within the Plan Year.

(X) the period during the Plan Year the Employee is a Participant in the Plan.

Compensation

( ) shall not include

(X) shall include

Employer Contributions made pursuant to a Salary Reduction Agreement which are not includable in the gross income of the Employee under Section 125, 402(a)(8), 402(h) or 403(b) of the Code.

Section 10. Employee Contribution

(a) Voluntary Contributions (non-deductible), unless elected in the CODA Adoption Agreement, are not permitted for Plan Years beginning after the Plan Year in which the Plan is adopted.

(b) Deductible Contributions are not permitted for Plan Years beginning after 1986.

(c) Rollover Contributions

( ) shall be permitted.

(X) shall be permitted only for those Employees who have met the eligibility requirements set forth in Section 5.

( ) shall not be permitted.

(d) Trustee-to-Trustee Transfers

( ) shall be permitted.

The Plan

( ) shall

( ) shall not

accept the transfer of assets from a defined benefit plan or money purchase pension plan (including a target benefit plan), or from a stock bonus or profit-sharing plan which would otherwise provide for a life annuity form of payment to the Participant.
(X) shall be permitted only for those Employees who have met the eligibility requirements set forth in Section 5.

The Plan

( ) shall

(X) shall not

accept the transfer of assets from a defined benefit plan or money purchase pension plan (including a target benefit plan), or from a stock bonus or profit-

sharing plan which would otherwise provide for a life annuity form of payment to the Participant.

( ) shall not be permitted.

Section 11. Vesting Schedule,

(a) The nonforfeitable interest of each Employee in his or her Employer Contributions Account balance shall be determined on the basis of the following (note: if, under Section 5(a) of this Adoption Agreement, more than one (1) Year of Service is required, "Nonforfeitable when made" must be checked):

( ) Nonforfeitable when made.

( ) 100% vesting after (not to exceed 5) Years of vesting service.

(X) 0% vesting after 1 Year.of Vesting Service.

50% vesting after 2 Years of Vesting Service.

100% (not less than 20) vesting after 3 Years of Vesting Service.

100% (not less than 40) vesting after 4 Years of Vesting Service.

100% (not less than 60) vesting after 5 Years of Vesting Service.

100% (not less than 80) vesting after 6 Years of Vesting Service.

100% vesting after 7 Years of Vesting Service.

(b) For vesting purposes, a Year of Service will be measured by

(X) the Plan Year.

( ) the twelve (12) consecutive month period commencing on the Employee's Employment Commencement Date and each subsequent twelve (12) consecutive month period commencing on the anniversary of such date.

Section 12. Restrictions on Years of Vesting Service

All of an Employee's Years of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions except:

( ) Years of Service before age 18;

( ) Years of Service during a period for which the Employee made no mandatory contributions under a predecessor plan;

( ) Years of Service before the Employer maintained this Plan;

( ) Years of Service before the Employer maintained this Plan or a predecessor plan;

( ) Years of Service before January 1, 1971, unless the Employee has had at least three (3) Years of Service after December 31, 1970;

( ) Years of Service before the effective date of ERISA if such Service would have been disregarded under the break in service rules of the prior plan in effect from

time to time before such date. For this purpose, break in service rules are rules which result in the loss of prior vesting or benefit accruals, or which deny an Employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specific period of time.

Section 13. Retirement Ages

(a) Normal Retirement. For each Participant, Normal Retirement Age shall be

(X) age 65 (not to exceed 65) years.

( ) the later of age (not to exceed 65) years or the (not to exceed 5th) anniversary of the first day of the first Plan Year in which the Participant commenced participation in the Plan.

(b) Early Retirement.

( ) Not applicable.

(X) The Early Retirement Age for each Participant shall be

( ) age years.

(X) the later of age 55 years and/or the date he is credited with 10 Years of Service.

(c) Disability. (Note: This selection is optional.) For purposes of the Plan, Disability shall not include a physical or mental condition which results directly or indirectly from

( ) injury intentionally self-inflicted,

( ) injury, or disease resulting from military service, or

( ) injury or disease suffered or contracted prior to the Employee's Employment Commencement Date.

(d) Payment of Benefits. Benefits under ARTICLE 10 of the Plan due a Participant upon Termination of Employment for a reason other than death, Disability or Normal or Early Retirement shall be paid to the terminated Participant or applied for his benefit from his Account(s) as follows (note: select only one):

(X) within 60 days following the close of the Plan Year in which the Participant's Termination of Employment occurs, or as soon as practicable thereafter.

( ) within 60 days following the close of the Plan Year during which the Participant incurs a one (1) year Break in Service, or as soon as practicable thereafter.

( ) within 60 days following the close of the Plan Year during which the terminated Participant attains what would have been his Normal Retirement Age.

( ) in a manner uniformly and non-discriminatorily established by the Administrator and not otherwise in contravention of Section 10.02 of the Plan.

Section 14. Participant Loans Participant loans

(X) shall be permitted (complete attached Exhibit 1).

( ) shall not be permitted.

Section 15. Withdrawals

(a) Employer Contributions (note: if the Plan is integrated with Social Security, withdrawals are not permitted)

(X) Withdrawals from a Participant's Employer Contributions Account shall not be permitted.

( ) Withdrawals of up to % (note: not more than 100%) of a Participant's vested interest in his Employer Contributions Account shall be permitted in accordance with Section 10.05 of the Plan.
(b) Employee Contributions

(Note: this section of the Adoption Agreement should be filled out only if the Plan permitted Employee Contributions for Plan Years beginning on or before the Effective Date.)

(X) Withdrawals from a Participant's Employee Contributions Account shall not be permitted.

( ) Withdrawals of up to % (note: not more than 100%) of a Participant's Employee Contributions Account may be permitted.

(c) Rollover Contributions

(Note: this section of the Adoption Agreement should be filled out only if Rollover contributions are a feature of this Plan.)

(X) Withdrawals from a Participant's Rollover Account shall not be permitted.

( ) Withdrawals of up to % (note: not more than 100%) of a Participant's Rollover Account may be permitted.

Section 16. Top-Heavy Plans

This section automatically applies only in Plan Years in which the Plan is Top-Heavy, but all options herein must be completed in case the Plan ever becomes Top-Heavy.

(a) Single Plan-Minimum Contributions and Allocations. Notwithstanding the provisions of Section 8, and before any contributions are allocated thereunder, minimum Employer Contributions shall be made and allocated pursuant to Section 13.02 of the Plan in a Plan Year in which the Plan is Top-Heavy.

(b) Minimum Vesting. Notwithstanding the provisions of Section 11, the vested interest of each Employee in his Employer Contributions Account in a Plan Year in which the Plan is Top Heavy shall be determined, pursuant to Section 13.03 of the Plan, on the basis of the following vesting schedule, unless an equal or a more rapid vesting schedule has been selected in Section 11:

( ) 100% vesting after (not to exceed 3) Years of Vesting Service.

(X) 0% vesting after 1 Year of Vesting Service.

50% (not less than 20) vesting after 2 Years of Vesting Service.

100% (not less than 40) vesting after 3 Years of Vesting Service.

100% (not less than 60) vesting after 4 Years of Vesting Service.

100% (not less than 80) vesting after 5 Years of Vesting Service.

100% vesting after 6 Years of Vesting Service.

If the vesting schedule under the Plan shifts in or out of the above schedule for any Plan Year because of the Plan's Top-Heavy status, such shift is an amendment to the vesting schedule and the election rule in Section 17.01(c) of the Plan applies.

(c) Multiple Plans-Minimum Contributions and Allocations. This subsection shall only apply if you sponsor another qualified retirement plan.

(i) Code Section 415(e) Buy-Backs. If another retirement plan is a qualified defined benefit plan, and if for a Plan Year the plans are Top-Heavy (but not Super Top Heavy), then the "Code Section 415(e) buy back" provisions, as defined in Section 13.04 of the Plan,

(X) shall be utilized, so that 125%

( ) shall not be utilized, so that 100%

of the dollar limitations set out in Section 5.07 of the Plan shall be used in computing the Defined Benefit Fraction and the Defined Contributions Fraction.

(ii) Minimum Accruals.

(X) Even if the Plan is not a Paired Plan, the Plan shall be considered to be subject to the Paired Plan minimum

allocation provisions of ARTICLE 14 of the Plan as if it were a Paired Plan.

( ) The following overriding provisions shall control instead of the Paired Plan provisions regarding minimum accruals:

(iii) No Duplicate Benefits. If another retirement plan is a qualified defined contribution plan which is to be treated as a Paired Plan, then the required minimum Employer Contributions and allocations shall be provided only under

( ) this Plan.

(X) the other qualified defined contribution plan.

(iv) Present Value. For purposes of establishing Present Value to compute the Top-Heavy Ratio for the Plan as set forth in Section 13.01(c) of the Plan, any benefit under a qualified defined benefit pension plan maintained by the Employer shall be discounted only for mortality and interest based on the following factors which, if a lump sum benefit is available, should be the factors used to compute a lump sum benefit:
Mortality Table:

( ) the UP-1984 Mortality Table

(X) as provided in the qualified defined benefit pension plan

( ) Other:

Interest Rate:

( ) the current rate specified for the purchase of immediate annuities by the Pension Benefit Guaranty Corporation

(X) as provided in the qualified defined benefit pension plan

( ) Other:

(v) Valuation Date. For purposes of computing the Top-Heavy Ratio, the Valuation Date shall be:

(X) The Limitation Year selected in Section 1(c).

( ) The twelve (12) consecutive month period ending on.

Section 17. Investments

(Note: Choose any one option or permitted combination of options.)

(a) Investment decisions with respect to the portion of the assets of the Plan indicated below shall be controlled as follows (note: all selections must total 100% of assets and shall be measured as of the execution date of this Adoption Agreement, or such other date as set by the Employer):

(X) 100% (not more than 100%) controlled by the Trustee in its sole discretion.

( ) % (not more than 100%)
controlled by an Investment Manager appointed by the Employer pursuant to the provisions of Section 16.04 of the Plan.

( ) % (not more than 100%) controlled by each Participant, with respect to his Accounts other than his Employer Contributions Account pursuant to the provisions of Section 5.08 of the Plan.

(b) ( ) Although the Trustee or an Investment Manager has been designated above to control a portion of the investments, notwithstanding the portion of investment control designated above, the Administrator may elect to permit each Participant to have the right, at the Participant's discretion, to control the investment of the vested amount of his Employer Contributions Account and the amount of his other Accounts.

(c) ( ) The Trustee may delegate its duty physically to hold and safeguard the assets of the Plan to the Sponsor as custodian.

(d) ( ) Investment by the Plan in Qualifying Employer Securities shall be permitted, provided the requirements of Sections 406, 407 and 408 of ERISA are met, to a maximum of _ % (note: not more than 100%) of ( ) that portion of the Trust Fund attributable to Employer Contributions and Forfeitures ( ) the value of the entire Trust Fund (note: election of this second option may require the registration of such securities with the Securities and Exchange Commission). With respect to the voting of such Qualifying Employer Securities, the following entity shall vote such shares (note: select only one):

( ) the Trustee.

( ) the Participant to whose Account the shares have been allocated.

( ) the Administrator or, if appointed, the Committee.

Section 18. Insured Death Benefit

(X) No life insurance shall be provided under the Plan.
( ) An additional death benefit may be provided through the purchase of life insurance policies at the election of a Participant in accordance with Section 8.02 of the Plan.

Section 19. Joint and Survivor Annuity

(a) Benefits under the Plan

(X) may

(X) may not

be paid in the form of an annuity involving life contingencies. (Note: Optional forms of benefit payment may not be eliminated.)

(b) If benefits may be paid in the form of an annuity, then the Qualified Joint and Survivor Annuity shall be an annuity with 50% of the annuity benefit continuing to a Participant's surviving Spouse at the Participant's death, unless a greater percentage is elected below:

( ) 75%

( ) 100%

Section 20. Limitation on Allocations

If you maintain or ever maintained another qualified plan (other than Paired Plan #003 or #005) in which any Participant in this Plan is (or was) a Participant or could

become a Participant, you must complete this Section. You must also complete this Section if you maintain a welfare benefit fund, as defined in Section 419(e) of the Code, or an individual medical account, as defined in Section 415(1)(2) of the Code, under which amounts are treated as Annual Additions with respect to any Participant in this Plan.

(a) (X) If the Participant is covered under another qualified defined contribution plan maintained by the Employer, other than a master or prototype plan (note: select only one option):

(X) The provisions of subsections (b) and (c) of Section 5.07 of the Plan will apply as if the other plan were a master or prototype plan.

( ) The amount of Annual Additions allocated to any Participant's Accounts under this Plan shall be limited to the Maximum Permissible Amount, and excess amounts will be properly reduced, as follows:

( ) This situation is not applicable.

(b) ( ) If the Participant is or has ever been a Participant in a defined benefit plan maintained by the Employer (note: select only one option):

( ) In any Limitation Year, the Annual Additions credited under this Plan to the Participant may not cause the sum of the Defined Benefit Fraction and Defined Contribution Fraction to exceed 1.0. If the Employer's contribution that would otherwise be made on the Participant's behalf during the Limitation Year would cause the 1.0 limitation to be exceeded, the rate of contribution under this Plan

will be reduced so that the sum of the fractions equals 1.0. If the 1.0 limitation is exceeded because of an Excess Amount, such Excess Amount will be reduced in accordance with subsection 5.07 (a) (iv) of the Plan.

( ) The amount of Annual Additions allocated to any Participant's Accounts under this Plan shall be limited to the Maximum Permissible Amount, and Excess Amounts will be properly reduced, as follows:

(X) This situation is not applicable.

(c) The Limitation Year is the following twelve (12) consecutive month period:

(X) The Limitation Year selected in section 1(c).

( ) The twelve (12) consecutive month period ending on

Section 21. service with Predecessor Employer

Employment with the following Predecessor Employer(s) shall be considered Service with the Employer for all purposes of the Plan. (Note: If the Employer is maintaining a tax-qualified plan of a Predecessor Employer, that Predecessor Employer must be listed; place an asterisk (*) after the name of any such Predecessor Employer.):

(X) There are no such predecessor employers.

( ) (1)

(2)

(3)

Section 22. Controlled Group Members

The following employers are Controlled Group Members:

(X) There are no such employers.

( ) (1)

(2)

(3)

Section 23. Controlled Group Members who are Adopting Employers

The following Controlled Group Members have adopted the Plan for which a single Trust Fund may be used for the investment of the Trust Fund:

(X) There are no such Employers.

( ) (1)

(2)

An Employer who has ever maintained or who later adopts any plan (including a Welfare Benefit Fund, as defined in Section 419(e) of the Code, which provides post-retirement medical benefits allocated to separate accounts for Key Employees as defined in Section 419A(d) (3) of the Code, or an individual medical account, as defined in Section 415(1)(2) of the Code) in addition to this Plan (other than Paired Plan #003 or #005) may not rely on an opinion letter issued by the

National Office of the Internal Revenue Service as evidence that this Plan is qualified under Section 401 of the Internal Revenue Code. If the Employer who adopts or maintains multiple plans wishes to obtain reliance that his or her Plan(s) are qualified, application for a determination letter should be made to the appropriate Key District Director of the Internal Revenue.

This Adoption Agreement may be used only in conjunction with Basic Plan document #01.

PLAN SPONSOR INFORMATION

Name and Address:
General Trust Company
Suite 101, 104 Woodmont Blvd.
Nashville, Tennessee 37205

Telephone Number: (615) 385-3288

IN WITNESS WHEREOF, the Employer and the undersigned Trustee(s) have caused this Adoption Agreement to be executed this 20th day of July, 1990.

THE EMPLOYER:
RAYMOND B. YATES, M. D., P. C.

THE TRUSTEE:
RAYMOND B. YATES
THE CUSTODIAN (only if Sponsor named custodian):

EXHIBIT 1

LOAN PROGRAM

(X) Check here and either adopt the Model Loan Program attached hereto or complete the provisions of this Exhibit below if loans are permitted under this Plan as elected by the Employer in Section 14 of the Adoption Agreement.

(X) The Model Loan Program attached shall apply.

( ) The provisions filled in below shall apply (attach separate sheet if necessary).
This Exhibit 1 shall be subject to the provisions of ARTICLE 12 of the Plan. If there is any conflict between the terms of this Exhibit 1 and ARTICLE 12 of the Plan, the Plan shall control.

Person(s) or position(s) authorized to administer the loan program: (specify)

Loan procedure:

Basis on which loan will be approved or denied:

Limitations (if any) on types and amounts of loans offered:

Procedure for determining reasonable rate of interest:

Types of collateral which may secure a loan:

Events constituting default and steps to be taken to preserve Plan assets in the event of such default:

MODEL LOAN PROGRAM

LOAN PROCEDURES

The administrators) of the loan program shall be the head of human resources and/or personnel (and those individuals to whom he or she may delegate this authority). The administrator shall keep loan applications and make them available to all plan participants during regular business hours. When a plan participant applies for a loan, the administrator of the loan program will contact two, or if possible three, local banks or lending institutions. The administrator shall obtain from those banks or lending institutions current prime rates based upon the same terms of the loan to be made from the plan. Consequently all such rates shall be obtained on a secured loan basis for a fixed amount of time at a fixed (i.e., not variable) rate. The administrator of the loan program shall then notify the plan participant of the rate to apply to his or her loan and determine if the participant wishes to continue his or her application for the loan. If the participant does not, the loan application will be so noted and retained in the files of the administrator. If the participant still wants to be considered for a loan, the administrator shall notify the participant of his or her approval or denial for a loan. Thereafter as soon as practicable, the loan shall be made to the plan participant if approved. No loan shall be made for a period beyond five years unless the loan is to purchase a principal residence. All loan repayments shall be made by payroll deduction at least quarterly. Each loan shall be evidenced by a note containing an acceleration upon default clause. The same loan note, varying only as to rate (as concurrently determined at the loan

application) and term of the loan, shall be used for all similarly situated plan participants.

BASIS ON WHICH LOAN WILL BE APPROVED OR DENIED

Loans generally will be approved except for the following:

1. Employees for whom there is a reasonable expectation that their work performance or past history with the company will result in their not being employed throughout the duration of their loan;

2. Employees who are seeking loans extending beyond their period of expected service because of retirement;

3. Former employees not actively at work with the employer so as to justify the payroll deduction repayment of the loan amount;

4. Seasonal or part-time employees who may reasonably be expected not to work a sufficient number of hours to seasonally repay a requested loan based on the required loan rate schedule;

5. Loans to any employee in excess of amounts permitted under the loan program.

LIMITATIONS ON TYPES AND AMOUNTS OF LOANS OFFERED

Loans generally will be offered for the following reasons:

1. Purchase or refurbishment of a home:

2. Payment of secondary or post-secondary education;

3. Purchase of a new or used car to be used for transportation to and from work or to transport children to school;

4. Medical expenses not paid for or reimbursed by the Medical Plan or Plans maintained by the employer;

5. For purposes of taking a regularly scheduled vacation.

6. To meet emergency liquidity requirements of the plan -participant.

The loan shall be limited to the lesser of (a) an amount equal to one-half of the participant's vested interest in his account balances as of the last valuation date or (b) $50,000.

SCHEDULE FOR DETERMINING REASONABLE RATE OF INTEREST

The administrator of the loan program shall check with not less than two and preferably three banks or lending institutions to determine what prevailing rates are being commercially offered in the geographic area concurrently with the loan application or the same term (i.e., duration) of the loan to be made from the plan. These rates shall be averaged and increased by one (1) percentage point (i.e., 100 basis points) to determine the rate to be paid by the plan participant. Further, this rate shall be charged to the participant during the term of his

or her loan. Interest rate shall be fixed during the term and will not fluctuate.

COLLATERAL WHICH MAY SECURE A LOAN

The only security acceptable to secure a loan is one-half of the vested account balance of an employee.

EVENTS CONSTITUTING DEFAULT AND STEPS TO BE TAKEN TO DEFER PLAN ASSETS IN EVENT OF SUCH A DEFAULT

In the event of default the amount of loan will accelerate and become immediately due and payable. The administrator of the loan program will send a written notice to the plan participant telling him or her that he or she has defaulted on their loan and that the full amount of the loan is now due and payable, with interest continuing to accrue at the original specified rate on all outstanding balances until the full amount due is paid. The offset to the account balance will occur at the time there has been a distributable event. Account balances shall also be credited with regular plan earnings or losses prior to distribution.

Department of the Treasury
Washington. DC 20224
Person to Contacts: Ms. Arrington
Telephone Number: (202) 566-4576
Refer Reply to: E:EP:Q:ICU
Date: 05/10/90

GENERAL TRUST CO
104 WOODMONT SUITE 190
NASHVILLE, TO 37205

Dear applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter to each employer who adopts this plan. You are also required to send a copy of the approved form of the plan, any approved amendments and related documents to each key District Director of Internal Revenue Service in whose jurisdiction there are adopting employers.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). An employer who adopts this plan will be considered to have a plan qualified under Code section 401(a) provided all the terms of the plan are followed, and the eligibility requirements and

contribution or benefit provisions are not more favorable for officers owners or highly compensated employees than for other employees. Except as stated below, the Key District Director will not issue a determination letter with regard to this plan.

Our opinion does not apply to the form of the plan for purposes of Code section 401(a)(16) if: (1) an employer ever maintained another qualified plan for one or more employees who are covered by this plan, other than a specified carried plan within the meaning of section 7 of Rev. Proc. 39-9, 1989-6 I.R.S. 14: or (2) after December 31, 1985, the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3). In such situations the employer should request a determination as to whether the plan considered with all related qualified plans and, if appropriate welfare benefit funds, satisfies the requirements of Code section 40l(a)(16) as to limitations on benefits and contributions in Code section 415.

If you, the plan sponsor, have any questions concerning the IRS processing of this case please call the above telephone number. This number is only for use of the plan sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the plan sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this Letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely yours,
Chief, Employee Plans Qualifications Branch

FIRST AMENDMENT TO THE

QUALIFIED PLANS

PROTOTYPE DEFINED CONTRIBUTION PLAN AND TRUST

BASIC DOCUMENT #01

WHEREAS, General Trust Company (Sponsor) established the Qualified Plans Prototype Defined Contribution Plan and Trust #01 (Prototype Plan), and the Adoption Agreements for such Prototype Plan having received favorable opinion letters from the Internal Revenue Service, dated as of May 10, 1990; and

WHEREAS, the Sponsor has been expressly delegated the authority by the adopting Employers of the Prototype Plan to amend the Prototype Plan as the Sponsor deems necessary or desirable; and

WHEREAS, the Internal Revenue Service, under Revenue Procedure 93-12, requires that the Prototype Plan be amended to comply with the Unemployment Compensation Amendments of 1992;

NOW, THEREFORE, the Prototype Plan is hereby amended as follows:

I.

Add to the end of the Prototype Plan new ARTICLE 19 to read as follows:

ARTICLE 19

DIRECT ROLLOVERS

19.01 Election of Direct Rollover.

This ARTICLE applies to distributions made on or after January 1, 1993. Notwithstanding "any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this ARTICLE, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

19.02 Definitions.

(a) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary, or for a specified period of ten years or more; or

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and

(iii) the portion of any distribution that is not includible in gross income (determined without regard

to the exclusion for net unrealized appreciation with respect to Employer securities).

(b) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(c) Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

II.

The effective date of this First Amendment shall be January 1, 1993.

III.

In all other respects, the Prototype Plan is ratified and confirmed.

SECOND AMENDMENT TO THE

QUALIFIED PLANS

PROTOTYPE DEFINED CONTRIBUTION PLAN AND TRUST

BASIC DOCUMENT #01

WHEREAS, Qualified Plans (Sponsor) established the Qualified Plans Prototype Defined Contribution Plan and Trust #01 (Prototype Plan), and the Adoption Agreements for such Prototype Plan having received favorable opinion letters from tile Internal Revenue Service, dated as of May 10, 1990; and

WHEREAS, the Sponsor has been expressly delegated the authority by tile adopting Employers of the Prototype Plan to amend tile Prototype Plan as tile Sponsor deems necessary or desirable; and

WHEREAS, the Internal Revenue Service, under Revenue Procedure 94-13, requires that the Prototype Plan be amended to comply with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93);

NOW, THEREFORE, the Prototype Plan is hereby amended as follows:

I.

Add to the end of Section 2.13, entitled Compensation, to read as follows:

In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, for plan years beginning on or

after January 1, 1994, the annual compensation of each employee taken into account under the plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is $150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1994, any reference in this plan to the limitation under section 401(a)(17) of the Code shall mean tile OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is $150,000.

II.

The effective date of this Second Amendment shall be January 1, 1994.

III.

In all other respects, the Prototype Plan is ratified and confirmed.

Department of the Treasury
Washington. DC 20224
Person to Contacts: Ms. Arrington
Telephone Number: (202) 566-4576
Refer Reply to: E:EP:Q:ICU
Date: 05/10/90

GENERAL TRUST CO
104 WOODMONT SUITE 190
NASHVILLE, TO 37205

Dear applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter to each employer who adopts this plan. You are also required to send a copy of the approved form of the plan, any approved amendments and related documents to each key District Director of Internal Revenue Service in whose jurisdiction there are adopting employers.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). An employer who adopts this plan will be considered to have a plan qualified under Code section 401(a) provided all the terms of the plan are followed, and the eligibility requirements and

contribution or benefit provisions are not more favorable for officers owners or highly compensated employees than for other employees. Except as stated below, the Key District Director will not issue a determination letter with regard to this plan.

Our opinion does not apply to the form of the plan for purposes of Code section 401(a)(16) if: (1) an employer ever maintained another qualified plan for one or more employees who are covered by this plan, other than a specified carried plan within the meaning of section 7 of Rev. Proc. 39-9, 1989-6 I.R.S. 14: or (2) after December 31, 1985, the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3). In such situations the employer should request a determination as to whether the plan considered with all related qualified plans and, if appropriate welfare benefit funds, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415.

If you, the plan sponsor, have any questions concerning the IRS processing of this case please call the above telephone number. This number is only for use of the plan sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the plan sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this Letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely yours,
Chief, Employee Plans Qualifications Branch

QUALIFIED PLANS

PROTOTYPE DEFINED CONTRIBUTION PLAN AND TRUST

General Trust Company hereby establishes this Prototype Plan and Trust for Employers wishing to establish or continue to profit sharing or money purchase pension plans.

An Employer may adopt this Prototype Plan as part of its Plan by completing and signing an Adoption Agreement, which adoption shall be effective when executed by the Trustee.

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ARTICLE 1

PURPOSE OF PLAN AND TRUST AND IMPLEMENTING PROVISIONS

1.01 Purpose.

The purpose of this Plan and Trust is to enable the Employer.to establish or continue a defined contribution plan for its employees.

1.02 Tax Aspects.

It is the intent of the Sponsor in establishing this Plan and Trust that it qualify and remain qualified under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended. However, in the event that the Trust hereunder after once having been qualified, fails to retain qualification, the provisions of Section 17.06 hereof shall be applicable as of the date said Trust is no longer qualified.

1.03 Adoption Agreement.

For purposes of facilitating the creation of this Plan and Trust under procedures promulgated by the Internal Revenue Service for establishing a variable form master defined contribution plan and trust, the Adoption Agreement executed by the Employer and the Trustee is hereby made a part hereof by reference as if fully set forth herein, and the definitions and provisions thereof elected by the Employer shall be applicable to the Plan and Trust of the Employer.

ARTICLE 2

DEFINITIONS

Unless otherwise explicitly specified, the following words and phrases as used herein shall have the meanings set forth below and shall be interpreted as stated in this ARTICLE.

2.01 "Account or Accounts" shall mean a Participant's Employer Contributions Account, Voluntary Contributions Account, Deductible Contributions Account, Elective Deferral Account, Rollover Account, Trustee-to-Trustee Transfer Account and Participant-Directed Investment Account, as described in Section 5.01.

2.02 "Accumulated Net Profits" shall mean that part of the surplus of the Employer derived from Net Profits and retained from time to time by the Employer.

2.03 "Administrator" shall mean, with respect to the Plan, the party to which the Employer shall delegate its administrative duties and responsibilities in accordance with ARTICLE 15 of the Plan and Section 3 of the Adoption Agreement. If the Employer does not delegate its administrative duties and responsibilities, the Employer shall be the Administrator.

2.04 "Adoption Agreement" shall mean the instrument by which the Employer elects to establish or continue its Plan by adoption of this prototype plan document.

2.05 "Allocation Date" shall mean the last day of each Plan Year. The Employer may establish such other Allocation Dates during a Plan Year; provided, however, that the use of more than one Allocation Date during a

Plan Year shall not be applied so as to result in discrimination in favor of Employees who are officers, shareholders or highly compensated.

2.06 "Anniversary Date" shall mean the first day of a Plan Year.

2.07 "Beneficiary" shall mean the recipient or recipients last designated by the Participant in writing on forms provided by the Employer who shall receive any benefits payable under the Plan upon the death of such Participant, subject, however, to the requirements of ARTICLES 8 and 11. If no such designation of Beneficiary has been received by the Employer prior to the date of death of the Participant, then such benefit shall be payable to the estate of the Participant.

2.08 "Board" shall mean the board of directors of the Employer.

2.09 "Break in Service" shall mean a twelve (12) consecutive month period during which an Employee has not been credited with more than five hundred (500) Hours of Service. For eligibility purposes, the period shall mean the Eligibility Computation Period. For purposes of computing an Employee's nonforfeitable right to the Account balance derived from Employer Contributions, Breaks in Service will be measured by the twelve (12) consecutive month period designated by the Employer in Section 11(b) of the Adoption Agreement.

2.10 "CODA" shall mean a qualified cash or deferred arrangement as described in Section 401(k) of the Code, ARTICLE VI of the Plan, and Section 24 of the profit sharing plan Adoption Agreement.

2.11 "Code" shall mean the Internal Revenue Code of 1986, as amended.

2.12 "Committee" shall mean the committee to which the Employer may delegate its administrative duties and responsibilities in accordance with ARTICLE 15.

2.13 "Compensation" shall mean, as elected by the Employer in Section 9 of the Adoption Agreement, all of each Participant's (a) W-2 earnings or (b) compensation. as that term is defined in Section 415(c)(3) of the Code. For any Self-Employed Individual covered under the Plan, Compensation will mean Earned Income. Compensation shall include only that Compensation which is actually paid to the Participant during the applicable period. Except as provided elsewhere in this Plan, the applicable period shall be the period elected by the Employer in Section 9 of the Adoption Agreement. If the Employer makes no election, the applicable period shall be the Plan Year.

Notwithstanding the above, if elected by the Employer in the Adoption Agreement, Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement which is not includible in the gross income of the Employee under Section 125, 402(a)(8), 402(h) or 403(b) of the Code.

The annual Compensation of each Participant taken into account under the Plan for any Year shall not exceed $200,000, as adjusted by the Secretary at the same time and in the same manner as under Section 415(d) of the Code. In determining the Compensation. of a Participant for purposes of this limitation, the rules of Section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the Spouse of the Participant and any lineal descendants of

the Participant who have not attained age nineteen (19) before the close of the Year.

If, as a result of the application of such rules the adjusted $200,000 limitation is exceeded, then (except for purposes of determining the portion of Compensation up to the integration level if this Plan provides for permitted disparity), the limitation shall be prorated among the affected individuals in proportion to each such individual's Compensation as determined under this Section prior to the application of this limitation.

2.14 "Controlled Group Member" shall mean, except as modified in Section 5.07(f)(vi), as follows: (a) any corporation which is a member of a controlled group of corporations (as defined in Section 414(b) of the Code) of which the Employer is a member, (b) any organization which is a member of a group of trades or businesses (whether or not incorporated) which is under common control with respect to the Employer (as defined in Section 414(c) of the Code), (c) any organization which is a member of an affiliated service group (as defined by Section 414(m) of the Code), or (d) any other entity required to be aggregated with the Employer pursuant to Section 414(0) of the Code and the regulations thereunder; but only for the period during which such other corporation, trade or business, organization or entity and the Employer are members of such controlled group of corporations, are under such common control, are serving as such affiliated service group or are required to be aggregated. All employees of Controlled Group Members shall be treated as employed by a single employer.

2.15 "Disability" shall mean the inability to engage in any substantial gainful activity by reason of any

medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The permanence and degree of such impairment shall be supported by medical evidence. If elected by the Employer in Section 8 of the Adoption Agreement, nonforfeitable contributions will be made to the Plan on behalf of each disabled Participant who is not a Highly Compensated Employee (within the meaning of Section 414(q) of the Code).

2.16 "Early Retirement Age" shall mean the age selected in Section 13(b) of the Adoption Agreement, at which time a Participant shall be entitled to receive an Early Retirement Benefit.

2.17 "Early Retirement Benefit" shall mean the benefit to which a Participant is entitled at his Early Retirement Date.

2.18 "Early Retirement Date" shall mean the date the Participant attains his Early Retirement Age and is fully vested pursuant to Section 9.01 of the Plan and Section 11 of the Adoption Agreement.

2.19 "Earned Income" shall mean the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which personal services of the individual are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Employer to a qualified plan to the extent deductible under Section 404 of the Code. Net earnings shall be determined with regard to the deduction allowed to the

Employer by Section 164(f) of the Code for taxable years beginning after December 31, 1989.

2.20 "Effective Date" shall mean, as to the Employer, the Effective Date of the Plan as specified in Section 1(b) of the Adoption Agreement.

2.21 "Elective Deferrals" shall mean contributions made at the election of the Participant by the Employer pursuant to ARTICLE 6 of the Plan.

2.22 "Eligibility Computation Period" shall mean, for purposes of determining Years of Service and Breaks in Service for purposes of eligibility, the following:

(a) The initial Eligibility Computation Period is the twelve (12) consecutive month period beginning on the Employment Commencement Date.

(b) The succeeding twelve (12) consecutive month periods shall commence on one of the following dates, as elected by the Employer in Section 5 of the Adoption Agreement:

(i) The first anniversary of the Employee's Employment Commencement Date; or

(ii) The first Plan Year which commences prior-to the first anniversary of the Employee's Employment Commencement Date regardless of whether the Employee is entitled to be credited with one thousand (1,000) Hours of Service during the initial Eligibility Computation Period. An Employee who is credited with one thousand (1,000) Hours of Service in both the initial Eligibility Computation Period and the first Plan Year which commences prior to the first anniversary of the Employee's initial Eligibility Computation Period will be

credited with two (2) Years of Service for purposes of eligibility to participate.

Years of Service and Breaks in Service will be measured on the same Eligibility Computation Period.

2.23 "Employee" shall mean any employee of the Employer maintaining the Plan or of any other employer required to be aggregated with the Employer under Section 414(b), (c), (m) or (o) of the Code. The term Employee shall also include any Leased Employee deemed to be an employee of any employer described in the preceding sentence as provided in Section 414(n) or (o) of the Code. For purposes of this Section, Employee shall also include an Owner-Employee or Self-Employed Individual. An individual who is classified in one or more of the categories specifically excluded in Section 4 of the Adoption Agreement shall not be defined as an Employee for purposes of the Plan unless and until he ceases to be so classified; provided, however, that any such excluded individual shall be credited with Hours of Service hereunder during the period he is excluded for purposes of determining his Years of Vesting Service and the time of his participation in the Plan in the event he ceases to be so classified.

2.24 "Employee Contributions" shall mean contributions made by the Employee pursuant to Section 4.02 of the Plan and Section 10 of the Adoption Agreement.

2.25 "Employer" shall mean that business organization, its predecessors (if, and to the extent, Years of Service thereunder is to be included pursuant to Section 2.62 of the Plan and Section 12 of the Adoption Agreement), successors and/or assigns, which have duly executed an Adoption Agreement. The

Employer also includes any Controlled Group Member that adopts the Plan as provided in Section 23 of the Adoption Agreement.

2.26 "Employer Contributions" shall mean contributions made by the Employer pursuant to Section 4.01 of the Plan and Section 7 of the Adoption Agreement.

2.27 "Employment Commencement Date" shall mean the date on which an Employee first performs an Hour of Service.

2.28 "Entry Date" shall mean the date on which an Employee enters the Plan pursuant to Section 5(d) of the Adoption Agreement.

2.29 "ERISA" shall mean Public Law 93-406, popularly known as the Employee Retirement Income Security Act, as amended.

2.30 "Five-Percent Owner" shall mean any person who owns (or is considered as owning within the meaning of Section 318 of the Code) more than five (5) percent of the outstanding stock of a corporate Employer or stock possessing more than five (5) percent of the total combined voting power of all stock of the Employer or more than five (5) percent of the interest in the non-corporate Employer.

2.31 "Forfeiture" shall mean the non-vested portion of a Participant's Employer Contributions Account which is forfeited pursuant to Sections 5.04 and 9.02.

2.32 "Highly Compensated Employee" shall mean any Employee who performs Service for the Employer during the determination year and who, during the look-

back year: (a) received Compensation from the Employer in excess of $75,000 (as adjusted pursuant to Section 415(d) of the Code); (b) received Compensation from the Employer in excess of $50,000 (as adjusted pursuant to Section 415(d) of the Code) and was a member of the top-paid group for such year; or (c) was an officer of the Employer and received Compensation during such year that is greater than fifty (50) percent of the dollar limitation in effect under Section 415(b)(1)(A) of the Code. The term Highly Compensated Employee also includes: (i) Employees who are both described in the preceding sentence if the term "determination year" is substituted for the term "look-back year" and the Employee is one of the one hundred (100) Employees who received the most Compensation from the Employer during the determination year; and (ii) Employees who are Five-Percent Owners at any time during the look-back year or determination year.

If no officer has satisfied the Compensation requirement of (c) above during either a determination year or look-back year, the highest paid officer for such year shall be treated as a Highly Compensated Employee.

For this purpose, the determination year shall be the Plan Year. The look-back year shall be the twelve-month period immediately preceding the determination year.

A Highly Compensated Employee includes any Employee whose Termination of Employment occurred (or who was deemed to have incurred a Termination of Employment) prior to the determination year, performs no Service for the Employer during the determination year, and was a Highly Compensated active Employee for either the Termination year or any determination year ending on or after the Employee's 55th birthday.

If an Employee is, during a determination year or look-back year, a Family Member of either a Five-Percent Owner who is an active or former Employee or a Highly Compensated Employee who is one of the ten (10) most highly compensated Employees ranked on the basis of Compensation paid by the Employer during such year, then the Family Member and the Five-Percent Owner or top-ten Highly Compensated Employee shall be aggregated. In such case, the Family Member and Five-Percent Owner or top-ten Highly Compensated Employee shall be treated as a single Employee receiving Compensation and Plan contributions or benefits equal to the sum of such Compensation and contributions or benefits of the Family Member and Five-Percent Owner or top-ten Highly Compensated Employee. For purposes of "his Section, Family Member includes the Spouse, lineal ascendants and descendants of the Employee or former Employee and the spouses of such lineal ascendants and descendants.

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the top one hundred (100) Employees, the number of Employees treated as officers and the Compensation that is considered, will be made in accordance with Section 414(q) of the Code and the regulations thereunder.

2.33 "Hour of Service" shall mean the following:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer and/or a Controlled Group Member. These Hours will be credited to the Employee for the computation period in which the duties are performed.

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer and/or a Controlled Group Member on account of a period of time during which no duties were performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including Disability), layoff, jury duty, military duty or leave of absence. No more than five hundred one (501) Hours of Service shall be credited under this subsection (b) for any single continuous period (whether or not such period occurs in a single computation period). Hours under this subsection (b) will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same hours shall not be credited both under subsection (a) or (b) and under this subsection (c). These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Hours of Service will be credited for employment with Controlled Group Members.

Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under Section 414(n) or (o) of the Code and the regulations thereunder.

Solely for purposes of determining whether a Break in Service for participation and vesting purposes has occurred in a computation period, an individual who` is

absent from work for maternity or paternity reasons or is on an authorized leave of absence (defined below) shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight (8) Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (i) by reason of the pregnancy of the individual, (ii) by reason of a birth of a child of the individual, (iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (iv) for purposes of caring for such child for a period beginning immediately following such birth or placement. An "authorized leave of absence" means any unpaid absence authorized by the Employer under the Employer's standard personnel practices, provided that all persons under similar circumstances must be treated alike in the granting of such Authorized Leaves of Absence. An absence due to service in the Armed Forces of the United States shall be considered an authorized leave of absence provided that the absence is caused by war or other emergency, or provided that the Employee is required to serve under the laws of conscription in time of peace. The Hours of Service credited under this paragraph for maternity or paternity reasons will be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or (2) in all other cases, in the following computation period.

Hours of Service shall be determined on the basis of the method selected in Section 6 of the Adoption Agreement.

2.34 "Inactive Participant" shall mean a Participant (or former Participant who has a balance remaining in his Accounts) who is not entitled to share in the allocation of Employer Contributions because the Participant is excluded pursuant to the option selected in Section 7(a) of the money purchase pension plan Adoption Agreement or Section 8(a) of the profit sharing plan Adoption Agreement.

2.35 "Investment Manager" shall mean:

(a) a registered investment advisor under the Investment Advisors Act of 1940, a bank as defined in that Act or an insurance company that:

(i) is qualified to perform services relating to the management, acquisition or disposition of Plan assets, and

(ii) has acknowledged fiduciary responsibility to the Plan in writing; or

(b) a bank or trust company that is subject to supervision by the United States or a State, a broker or dealer registered under the Securities Exchange Act of 1934 or a "leasing agency" as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, or a nominee of such bank, trust company, broker or dealer, or clearing agency.

2.36 "Leased Employee" shall mean any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full time basis for a period of at

least one (1) year, and such services are of a type historically performed by employees in the business field of the recipient employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A Leased Employee shall net be considered an employee of the recipient if: (a) such employee is covered by a money purchase pension plan providing: (i) a nonintegrated employer contribution rate of at least ten (10) percent of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Section 125, 402(a)(8), 402(h) or 403(b) of the Code, (ii) immediate participation, and (iii) full and immediate vesting; and (b) Leased Employees do not constitute more than twenty (20) percent of the recipient's nonhighly compensated workforce.

2.37 "Net Profits" shall mean the Net Profits of the Employer as defined in Section 7 of the Adoption Agreement (for Profit-Sharing Plans).

2.38 "Normal Retirement Age" shall mean the age selected in Section 13 of the Adoption Agreement, at which time a Participant shall be entitled to receive a Normal Retirement Benefit. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

2.39 "Normal Retirement Benefit" shall mean the benefit to which a Participant is entitled at his Normal Retirement Date.

2.40 "Normal Retirement Date" shall mean the first day of the month coincident with or next following a Participant's Normal Retirement Age.

2.41 "Owner-Employee" shall mean an individual who is a sole proprietor, or who is a partner owning more than ten (10) percent of the capital or profits interest of the partnership.

2.42 "Paired Plans" shall mean two (2) defined contribution plans adopted by the Employer pursuant to Adoption Agreements #001 and #003 under this prototype plan, the Defined Contribution Basic Plan Document #01, when paired under ARTICLE 14. Paired Plans shall be standardized plans established by the Employer pursuant to Revenue Procedure 84-23, as updated by Revenue Procedure 89-9.

2.43 "Participant" shall mean an Employee who meets all applicable conditions of eligibility of Section 5 of the Adoption Agreement and has commenced participation in accordance with such Section and ARTICLE 3 hereof.

2.44 "Plan" shall mean the defined contribution plan established by the Employer as described in the Adoption Agreement, together with the applicable provisions of this Plan, including the Trust established pursuant to ARTICLE 16 hereof, and any and all amendments thereto.

2.45 "Plan Year" shall mean the twelve (12) consecutive month period designated by the Employer in Section 1(d) of the Adoption Agreement.

2.46 "Predecessor Employer" shall mean the same business of the Employer prior to its present form. For example, if the Employer is presently in corporate

form, it shall mean the same business operated as a proprietorship or partnership.

2.47 "Predecessor Plan" shall mean the plan of deferred compensation, if any, which has been amended and restated by adoption of this Plan.'

2.48 "Qualified Joint and Survivor Annuity" shall mean an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse as described in Section 11.04(d).

2.49 "Qualified Life Insurance Company" shall mean a legal reserve life insurance company licensed to do business in the State in which the Employer maintains its principal place of business.

2.50 "Retired Participant" shall mean any Participant whose Termination of Employment entitles the Participant to receive benefits under Section 7.01, 7.02 or 7.03, subject to ARTICLE 11.

2.51 "Self-Employed Individual" shall mean an individual who has Earned Income for the taxable year from the trade or business for which the Plan is established; also, an individual who would have had Earned Income but for the fact that the trade or business had no Net Profits for the taxable year.

2.52 "Service" shall mean service as an Employee of the Employer.

2.53 "Sponsor" shall mean General Trust Company, the sponsoring organization.

2.54 "TEFRA" shall mean the Tax Equity and Fiscal Responsibility Act of 1982.

2.55 "Termination of Employment" shall mean the cessation of active work for the Employer. However, should an Employee cease active work due to sickness, injury, leave of absence, or temporary layoff, employment shall be deemed to be continued until receipt by the Trustee, from the Employer, of a written notice of termination. In the giving of such notice of the Employer to the Trustee, all Participants in similar situations shall be treated alike.

2.56 "Trust Fund" shall mean the assets of the Trust established pursuant to ARTICLE 16 hereunder, held and administered by the Trustee for purposes of this Plan.

2.57 "Trust Fund Earnings" shall mean (a) the fair market value of the Trust Fund on the current Allocation Date, minus (b) the fair market value of the Trust Fund on the Allocation Date that immediately precedes the current Allocation Date, minus (c) all contributions paid to the Trust Fund from such preceding Allocation Date through the current Allocation Date (including any dividends or credits earned on insurance contracts), plus (d) all benefits paid to Participants from such preceding Allocation Date through the current Allocation Date (including any insurance premiums paid or accrued).

2.58 "Trustee" shall mean the individual or, jointly and severally, the individuals as specified in Section 3 of the Adoption Agreement who have accepted the duties and responsibilities of this position by execution of the Adoption Agreement or such other writing as will evidence such acceptance. The Trustee shall be specifically limited to those other affiliates of the Sponsor which are legally authorized to perform fiduciary trust services and to those individuals and

organizations permitted by law and authorized in writing by the Sponsor to act as Trustee to the extent so authorized.

2.59 "Vested Benefit" shall mean the portion of an Account to which a Participant is entitled as determined under Section 9.01 of the Plan and Section 11 of the Adoption Agreement.

2.60 "Year of Service" shall mean a twelve (12) consecutive month period during which an Employee has been credited with at least one thousand (1,000) Hours of Service. For eligibility purposes, the period shall be the Eligibility Computation Period. For vesting purposes, the period will be measured by the Plan Year, or the twelve (12) consecutive month period commencing on the date the Employee first performs on Hour of Service and each subsequent twelve (12) consecutive month period commencing on the anniversary of such date, as elected by the Employer in Section 11 of the Adoption Agreement. For all other purposes, the period will be measured by the Plan Year.

If the Employer maintains the plan of a Predecessor Employer, years of service with such Predecessor Employer will be treated as Years of Service for the Employer.

If the first Plan Year is a Short Plan Year (less than twelve (12) consecutive months) or the Plan Year is changed creating a Short Plan Year, the following special rules apply for determining Years of Service:

(a) A Participant receives credit for a Year of Service for purposes of receiving an allocation of Employer Contributions (and Forfeitures, if applicable), and for

purposes of computing rears of Service for vesting purposes and Years of Service for eligibility purposes, if the Participant receives credit for the Applicable Hours during the Short Plan Year. The term Applicable Hours shall equal "X" where X is defined as H/12 times Y where Y equals the number of complete months in the Short Plan Year, and H equals 1,000 Hours of Service.

(b) Notwithstanding the above, if a Participant would have been credited with a Year of Service for vesting purposes during the 12 month period beginning on the first day of the Short Plan Year, then the Participant will receive a Year of Service for vesting purposes for the Short Plan Year.

2.61 "Years of Vesting Service" shall mean the sum of an Employee's Years of Service expressed in whole years; excluding, however, any Years of Service excluded under Section 12 of the Adoption Agreement.

ARTICLE 3

ELIGIBILITY AND PARTICIPATION

3.01 Eligibility.

Each Employee who is not excluded from participation under Section 4 of the Adoption Agreement and who has met tine eligibility requirements set forth in Section 5 of the Adoption Agreement shall be eligible to become a Participant on the Entry Date. Notwithstanding the foregoing, an Employee shall enter the Plan no later than the earlier of:

(a) the first day of the Plan Year beginning after the date on which the Employee has met the minimum age and service requirements; or

(b) six (6) months after the date the requirements are met.

3.02 Participation.

Each Employee who has met the eligibility requirements for participation shall become a Participant as set forth in Section 5 of the Adoption Agreement, with the following exceptions:

(a) In the case of an Employer which maintained a Predecessor Plan, each Employee participating in such plan immediately prior to the Effective Date hereof shall become a Participant on the Effective Date hereof.

(b) If the Plan provides one hundred (100) percent vesting immediately after an Employee completes the eligibility requirements set forth in Section 5 of the Adoption Agreement, and an Employee has a one (1)

year Break in Service before satisfying the Plan's requirements for eligibility, Service before such Break will not be taken into account.

(c) In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, Years of Service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of Years of Service. Such aggregate number of Years of Service will not include any Years of Service disregarded under the preceding sentence by reason of prior Breaks in Service. If a Participant's Years of Service are disregarded pursuant to this subsection (c), such Participant will be treated as a new Employee for eligibility purposes. If a Participant's Years of Service may not be disregarded pursuant to this subsection (c), such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

3.03 Return to Eligible Class.

In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate but has not incurred a Break in service, such Employee will participate immediately upon returning to an eligible class of Employees. If such Participant incurs a Break in Service, eligibility will be determined pursuant to Section 3.02.

In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the

minimum age and service requirements and would have otherwise previously become a Participant.

3.04 Transfers Among Adopting Employers Which Are Controlled Group Members.

A transfer of an Employee directly from one adopting Employer which is a Controlled Group Member to another shall not constitute a termination of employment or an interruption in Years of Service; provided, however, that there shall be no duplication of benefits. The Accounts, if any, attributable to a Participant's Service with an Employer which is a Controlled Group Member from which he transferred shall be retained in such Employer's Plan, shall be credited with any Trust Fund Earnings or other adjustments attributable thereto in accordance with Section 5.05 and shall continue to vest based on his continued Years of Service under that Controlled Group Member to which he transferred. Immediately upon his transfer, such Employee shall participate in the plan of the Controlled Group Member to which he transferred; provided, however, that his Years of Service for determining his nonforfeitable benefit under the Plan of the Employer from which he transferred shall count as years of Service under the Plan of the Controlled Group Member to which he transferred.

3.05 Controlled Trades or Businesses.

(a) If this Plan provides contributions or benefits for one or more Owner-Employees who control both the business for which this Plan is established and one or more other trades or businesses, the Plan and the plan established for other trades or businesses must, when looked at as a single plan, satisfy Sections 401(a) and

(d) of the Code for the employees of this and all other trades or businesses.

(b) If the Plan provides contributions or benefits for one or more Owner-Employees who control one or more trades or businesses, the employees of the other trades or businesses must be included in a plan which satisfies Section 401(a) and (d) of the Code and which provides contributions and benefits not less favorable than provided for such Owner-Employee under this Plan.

(c) If an individual is covered as an Owner-Employee under the plans of two or more trades or businesses which are not controlled and the individual controls a trade or business, then the contributions or benefits for the employees under the plan of the trade or business which are controlled must be as favorable as those provided for him under the most favorable plan of the trades or businesses which are not controlled.

(d) For purposes of subsections (a), (b) and (c), an Owner-Employee, or two or more Owner-Employees shall be considered to control a trade or business if such Owner-Employee, or such two or more Owner-Employees together:

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in the partnership.

For purposes of the preceding sentence, an Owner-Employee, or two or more Owner-Employees shall be treated as owning any interest in a partnership which is

owned, directly or indirectly, by a partnership which such Owner-Employee or such two or more Owner-Employees, are considered to control within the meaning of the preceding sentence.

3.06 Acceptance.

The Plan shall not be deemed either to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Employee. No provision of the Plan shall be deemed to abridge or limit any managerial right of the Employer or to give any Employee or Participant the right to be retained in employment, or to interfere with the right of the Employer to discharge any Employee or Participant at any time, regardless of the effect which such discharge may have upon him as a Participant. By his act of participation herein, each Participant, on behalf of himself, his heirs, assigns and Beneficiary or Beneficiaries shall be deemed conclusively to have agreed to and accepted the terms and conditions of the Plan.

ARTICLE 4

CONTRIBUTIONS

4.01 Employer Contributions.

If the Plan is a profit sharing plan, then each Plan Year the Employer shall make a contribution computed under Section 7 of the Adoption Agreement. Such contribution may be made either in cash or in other property acceptable to the Trustee.

If the Plan is a money purchase pension plan, then each Plan Year the Employer shall make a contribution as a minimum funding standard computed under Section 7 of the Adoption Agreement on behalf of Participants who are entitled to receive an allocation pursuant to Section 7 of the Adoption Agreement. The Employer Contribution may be made either in cash or in other property acceptable to the Trustee.

Notwithstanding the foregoing, if the Plan is a non-standardized plan, then a Self-Employed Individual, an Owner Employee or an Employee who is not an officer, shareholder or highly compensated individual may elect not to participate in the Plan in a Plan Year or, at his election, may direct the Employer not to contribute on his behalf for a Plan Year, or to contribute for a Plan Year a lesser portion than that to be contributed on behalf of other Participants for the Plan Year according to the contribution and allocation formulas of the Plan. Such an election shall be in writing and shall be made in such form, and at such time, as the Employer may require. An Employee who is a partner in a partnership Employer that adopts the Plan may elect to make a one-time irrevocable election upon the Employee's Employment Commencement Date or upon the

Employee's date of Plan participation not to participate in the Plan or to direct the Employer not to contribute on his behalf. Such an election shall be in writing and shall be made in such form, and at such time, as the Employer may require.

4.02 Employee Contributions.

(a) Voluntary Contributions.

Except as provided for in Section 6.0.7, this Plan will not accept nondeductible Voluntary Contributions for Plan Years beginning after the Plan Year in which this Plan is adopted by the Employer. Voluntary Contributions for Plan Years beginning after December 31, 1986, together with any Matching Contributions as defined in Section 401(m) of the Code, will be limited so as to meet the nondiscrimination test of Section 401(m).

(b) Deductible Contributions.

The Administrator will not accept Deductible Contributions which are made for a taxable year beginning after December 31, 1986. Deductible Contributions made prior to that date will be maintained in a separate Account which will be nonforfeitable at all times. The Account will share in the gains and losses of the Trust Fund in the same manner as described in Section 5.05. No part of the Deductible Contributions Account will be used to purchase life insurance. Subject to ARTICLE 11 (if applicable), the Participant may withdraw any part of the Deductible Contributions Account by making a written application. to the Administrator.

4.03 Elective Deferrals.

If the Plan is a profit sharing plan and the Employer selects the CODA option under Section 24 of the Adoption Agreement, subject to the limitations and requirements of ARTICLE 6, beginning with the first full payroll period beginning after the later of (a) the Effective Date or (b) the date this Plan is communicated to the Participants, each Employee who is eligible to participate in the Plan and who desires to make Elective Deferrals shall sign a written participation form (hereinafter referred to as the "Salary Reduction Agreement"). The terms of the Salary Reduction Agreement shall provide that the Participant agrees to accept a reduction in Compensation from- the Employer in whole percentages or specified dollar amounts as provided in Section 24, Item 2 of the Adoption Agreement; provided, however, that in no event shall the reduction in Compensation, when added to the amount allocated to the Participant's Employer Contributions Account pursuant to Section 8 of the Adoption Agreement, exceed the limits outlined in Section 5.07. In consideration of such Agreement, the Employer will make a contribution (referred to as an Elective Deferral) to the Plan on behalf of the Participant for such payroll period in an amount equal to the total amount by which the Participant's Compensation was reduced during the payroll period pursuant to the Salary Reduction Agreement.

4.04 Rollover Contributions.

If so authorized under Section 10 of the Adoption Agreement, an Employee may roll over to this Plan the following: (a) His interest in a pension, profit-sharing or stock bonus plan qualified under Section 401(a) or 403(a) of the Code to this Plan, provided that:

(i) no part of the distribution is attributable to contributions made on behalf of the Employee while he was a Key Employee in a Top-Heavy Plan as defined in Section 13.01;

(ii) the amount distributed from such plan is transferred to this Plan no later than the 60th day after such distribution was received by the Employee;

(iii) the distributing, constituted the Employee's entire nonforfeitable interest in such plan and was made within one taxable year to the Employee as a lump sum distribution; and

(iv) the amount transferred to this Plan does not include any voluntary employee contributions made by the Employee to the prior plan.

(b) An Individual Retirement Plan qualified under Section 408 of the Code, where the Individual Retirement Plan was used as a conduit from the plan from which the distribution was made and the rollover is made in accordance with subsection (a), provided that the amount so transferred does not include:

(i) amounts received by the Individual Retirement Plan that were attributable to contributions made on behalf of a Self-Employed Individual, and

(ii) contributions made by the Employee to the Individual Retirement Plan or earnings on such contributions.

Furthermore, a rollover of "accumulated Deductible Employee Contributions" (as defined by Section 72(o) of the Code) may be made if and to the extent permitted by the Secretary of the Treasury. An

Employee's interest in such rollover and earnings thereon shall remain 100 percent vested and nonforfeitable at all times.

4.05 Trustee-To-Trustee Transfers.

If so authorized under Section 10 of the Adoption Agreement, an Employee may make a direct transfer of plan assets attributable to his participation in a pension, profit-sharing or stock bonus plan qualified under Section 401(a) of the Code to the Plan from such other plan by that plan's trustee. A separate account shall be established for such assets in the name of the Employee. Such assets, together with all records relating to accrued benefits, contributions and account balances shall be accepted from the trustee or custodian under the qualified plan, or, in the case of insurance policies, from the owner thereof if different from the trustee or custodian. An Employee's interest in the separate account and earnings thereon shall remain 100 percent vested and nonforfeitable at all times. Such account shall be subject to the requirements set forth in ARTICLE 11.

Assets attributable to employment as an Owner-Employee under an H.R.-10 plan (exclusive of the portion attributable to voluntary contributions thereunder) shall not begin to be distributed before the Employee dies, incurs a Disability or attains age 59-1/2, nor later than the taxable year in which the Employee attains age 70-1/2.

No part of such direct transfer may consist of Voluntary Contributions. Likewise, the Trustee may make such a direct transfer from this Plan of assets attributable to a Participant's participation in this Plan

to another pension, profit-sharing or stock bonus plan qualified under Section 401(a) of the Code.

Such direct trustee-to-trustee transfers shall not be considered either in determining the maximum benefits permissible under the Plan pursuant to Section 5.07 hereof or as contributions by the Employer under Section 7 of the Adoption Agreement.

4.06 Prohibition of Reversion.

Contributions made by the Employer to the Plan shall be made irrevocably and it shall be impossible for the assets of the Plan to inure to the benefit of the Employer or to be used in any manner other than for the exclusive purpose of providing benefits to Participants, Inactive Participants, Retired Participants and Beneficiaries, and for defraying reasonable expenses of administering the Plan; provided, however, that nothing herein shall be construed to prohibit the return to the Employer of all or part of a Contribution:

(a) which is made by the Employer due to a mistake of fact, provided the return of such Contribution is made within one (1) year after the date of payment thereof, or

(b) which is conditioned upon initial qualification of the Plan under the Code pursuant to Section 17.06, provided the return is made, if the Plan does not qualify, within one year after the denial of qualification by the Internal Revenue Service, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasurer may prescribe, or

(c) to the extent a deduction thereof under Section 404 of the Code is disallowed, provided the return of such Contribution is limited to the amount disallowed and is made within one year after the disallowance.

ARTICLE 5

PARTICIPANTS' ACCOUNTS

5.01 Establishment of Participants' Accounts.

The Trustee shall maintain separate Accounts for each Employee to which will be credited contributions and earnings as follows:

(a) Employer Contributions Account. Employer Contributions made on the Participant's behalf pursuant to Section 7 of the Adoption Agreement and Forfeitures reallocated pursuant to Section 7 of the Adoption Agreement, if applicable, will be maintained in a separate Account.

(b) Voluntary Contributions Account. Voluntary Contributions made by the Participant pursuant to Section 6.07, if any, will be maintained in a separate Account which will be nonforfeitable at all times.

(c) Matching Contributions Account. Matching Contributions made by the Employer on the Participant's behalf pursuant to Section 6.08, will be maintained in a separate Account.

(d) Deductible Contributions Account. Deductible Contributions which are made for taxable years beginning before January 1, 1987 will be maintained in a separate Account which will be nonforfeitable at all times. No part of the Deductible Contribution Account will be used to purchase life insurance. Subject to ARTICLE 11 (if applicable), the Participant may withdraw any part of the Deductible Contribution Account by making a written application to the Administrator.

(e) Elective Deferral Account. Elective Deferrals made on the Participant's behalf through an applicable Salary Reduction Agreement pursuant to Section 6.01, and the interest, dividends, earnings or proceeds of any insurance policy(ies) purchased with funds from this Account will be maintained in a separate Account which will be nonforfeitable at all times.

(f) Rollover Account. Rollover Contributions made by an Employee pursuant to Section 4.04 will be maintained in a separate Account which will be nonforfeitable at all times.

(g) Trustee-to-Trustee Transfer Account. Trustee-to-Trustee Transfers made by an Employee pursuant to Section 4.05 will be maintained in a separate Account which will be nonforfeitable at all times. Such Account shall be subject to the rules of ARTICLE 11.

(h) Participant-Directed Investment Account. Participant-Directed Investments, if elected by the Employer in Section 17 of the Adoption Agreement, will be maintained in a separate Account, but such Account shall not be segregated and shall be maintained separately only for bookkeeping purposes.

Each of the Accounts described above, except for Participant-Directed Investment Accounts, will share in the gains and losses of the Trust Fund in the same manner as described in Section 5.05. Each of the Accounts described above shall be debited with all disbursements to the Participant or his Beneficiary and, except for Deductible Contributions Accounts, the purchases of insurance policies from this Account.

5.02 Valuation of Trust Fund.

(a) The assets of the Trust Fund will be valued annually at fair market value as of the last day of the Plan Year. On such date, the earnings and losses of the Trust Fund will be allocated to each Participant's Accounts in the ratio that such Account balances bear to all Account balances.

(b) If the Plan is fully insured, any dividends or credits earned on insurance contracts will be applied, within the taxable year of the Employer in which received or within the next succeeding taxable year, toward the next premiums due before any further Employer Contributions are so applied.

(c) If the Plan is trusteed, any dividends or credits earned on insurance contracts will be allocated to the Participant's Account derived from Employer Contributions for whose benefit the contract is held.

5.03 Allocation of Employer Contributions.

On each Allocation Date, on behalf of each eligible Participant, Employer Contributions shall be allocated to such Participant's Employer Contributions Account in accordance with Section 8 of the Adoption Agreement.

If the Plan is a profit-sharing plan and the Plan is integrated with Social Security, as elected in Section 8 of the Adoption Agreement, Employer Contributions for the Plan Year plus any Forfeitures will be allocated to Participants' Accounts as follows:

STEP ONE: Contributions and Forfeitures will be allocated to each Participant's Account in the ratio that

each Participant's total Compensation bears to all Participant's total Compensation, but not in excess of 3% of each Participant's Compensation.

STEP TWO: Any Contributions and Forfeitures remaining after the allocation in Step One will be allocated to each Participant's Account in the ratio that each Participant's Compensation for the Plan Year in excess of the integration level bears to the excess Compensation of all Participants, but not in excess of 3%.

STEP THREE: Any Contributions and Forfeitures remaining after the allocation in Step Two will be allocated to each Participant's Account in the ratio that the sum of each Participant's total Compensation and Compensation in excess of the integration level bears to the sum of all Participants total Compensation and Compensation in excess of the integration level, but not in excess of the maximum profit-sharing disparity rate.

STEP FOUR: Any remaining Employer Contributions or Forfeitures will be allocated to each Participant's Account in the ratio that each Participant's total Compensation for the Plan Year bears to all Participants' total Compensation for that Year.

The integration level shall be equal to the taxable wage base or such lesser amount elected by the Employer in Section 8 of the Adoption Agreement. The taxable wage base is the maximum amount of earnings which may be considered wages for a Year under Section 3121(a)(1) of the Code in effect as of the beginning of the Plan Year.

Compensation shall mean Compensation as defined in Section 13.02.

The maximum profit-sharing disparity rate is equal to the lesser of

(a) 2.7%

(b) the applicable percentage determined in accordance with the table below:

If the integration level Is more than	But not more than	The applicable percentage is:
$0	X*	2.7%
X* of TWB	80% of TWB	1.3%
80% of TWB	Y**	2.4%

*X = the greater of $10,000 or 20 percent of the TWB
**Y = any amount more than 80% of the TWB but less than 100%, of the TWB.

If the integration level used is equal to the taxable wage base, the applicable percentage is 2.7%.

5.04 Forfeitures.

On each Allocation Date, any Forfeitures occurring will be disposed of in the following manner:

(a) If the Plan is a profit sharing plan, any Forfeitures occurring will be aggregated with any Employer Contributions for the Plan Year and allocated in accordance with Section 8 of the Adoption Agreement;

(b) If the Plan is a money purchase pension plan, as elected by the Employer in Section 11 of the Adoption Agreement:

(i) any Forfeitures occurring will reduce Employer Contributions for the next Plan Year, or

(ii) Forfeitures will be allocated in the ratio that the Compensation of each Participant bears to that of all Participants.

No Forfeitures will occur solely as a result of an Employee's withdrawal of Voluntary Contributions.

5.05 Trust Earnings and Losses.

On each Allocation Date, each Participant's Account shall be credited or charged with such Account's share of the Trust Fund Earnings or losses since the last Allocation Date. With respect to Participant-Directed Investment Accounts, earnings and losses shall be credited or charged to these Accounts as set forth in Section 5.08 hereof. With respect to the other Accounts of the Participant not directed pursuant to Section 5.08 hereof, earnings and losses shall be in the same proportion to such Trust Fund Earnings that such Account balance on the last Allocation Date bears to the total of the non-directed Account balances on the last Allocation Date of all Participants who were Participants on the last Allocation Date and who are Participants on the current Allocation Date. In determining the Account balances on the last Allocation Date, (i) the Elective Deferral Account shall be increased by one-half of any Elective Deferrals (excluding any additional Elective Deferrals made during the last complete payroll period of a Plan Year) credited to the Elective Deferral Account since' the

preceding Allocation Date, (ii) each Employer Contributions Account balance shall be reduced by the cash surrender value of any life insurance policies included in the Employer Contributions Account balance on the last Allocation Date, and (iii) each Account shall be reduced by the amount of any disbursements from such Account during the Plan Year. Alternatively, if approved by the Trustee (or custodian) and the Administrator, Trust Fund Earnings may be allocated in any equitable, uniform and nondiscriminatory manner which is selected for the purpose of recognizing the timing of contributions, withdrawals, distributions, transfers, Participant or Employer directed investments or other temporal events affecting Account value as adjustments to Account balances.

If a Participant rolls over or transfers funds pursuant to Section 4.04 or 4.05 during the Plan Year, then for purposes of allocating the Participant's share of the Trust Fund Earnings and losses' for that same Plan Year, the Participant's Rollover Account balance or Trustee-to-Trustee Transfer Account balance as of the preceding Allocation Date shall include the amount the Participant rolls over or transfers during the Plan Year, times the number of days in the Plan Year in which the rollover or transfer occurs, beginning with the day of the transfer or rollover, divided by 365.

5.06 Inactive Participants.

Unless otherwise provided under Section 8(b) of the Adoption Agreement, an Inactive Participant shall not be entitled to share in Employer Contributions, or Forfeitures if applicable, for a Plan Year. Nevertheless, his Accounts shall be maintained and credited or charged with Trust Fund Earnings in accordance with

Section 5.05 hereof, until the balance thereof (to the extent vested) shall have been fully distributed.

5.07 Limitations on Allocations.

(a) Participant in One Defined Contribution Plan.

(i) If the Participant does not participate in, and has never participated in, another qualified plan, a welfare benefit fund as described in Section 419(e) of the Code maintained by the Employer, or an individual medical account as described in Section 415(1)(2) of the Code maintained by the Employer, which provides an Annual Addition as defined in subsection (e)(i), the amount of Annual Additions which may be credited to the Participant's Individual Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Employer Contributions Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

(ii) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(iii) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible

Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

(iv) If pursuant to subsection (iii) or as a result of the allocation of Forfeitures, there is an Excess Amount, the excess will be disposed of as follows:

(1) Any nondeductible Voluntary Contributions, to the extent they would reduce the Excess Amount, will be returned to the Participant;

(2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation
Year, the Excess Amount in the Participant's Employer Contributions Account will be used to reduce Employer Contributions (including any allocation of Forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(3) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year, if necessary.

(4) If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, it will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be

allocated and reallocated to Participants' Accounts before any Employer Contributions or any Employee Contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants.

(b) Participant Covered Under Another Defined Contribution Plan.

(i) This Section applies if, in addition to this Plan, the Participant is covered under another qualified Master or Prototype defined contribution plan maintained by the Employer, a welfare benefit fund as defined in Section 419(e) of the Code maintained by the Employer, or an individual medical account, as defined in Section 415(1)(2) of the Code maintained by the Employer, which provides an Annual Addition as defined in subsection (e)(i), during any Limitation Year. The Annual Additions which may be credited to a Participant's Accounts under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's individual account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Employer Contributions Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other

defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Accounts under this Plan for the Limitation Year.

(ii) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in subsection (a) (ii).

(iii) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

(iv) If, pursuant to subparagraph (iii) or as a result of the allocation of Forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first, regardless of the actual Allocation Date.

(v) If an Excess Amount was allocated to a Participant on an Allocation Date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of:

(1) the total Excess Amount allocated as of such date, times

(2) the ratio of (A) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified Master or Prototype defined contribution plans.

(vi) Any Excess Amount attributed to this Plan will be disposed in the manner described in subsection (a) (iv).

(c) Participant Covered Under Another Defined Contribution Plan Which Is Not A Master Or Prototype Plan.

If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a Master or Prototype Plan, Annual Additions which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with subsections (b) and (c) as though the other plan was a Master or' Prototype Plan unless the Employer provides other limitations in Section 19 of the Adoption Agreement.

(d) Participant Covered Under A Defined Benefit Plan. If the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, the sum of the Participant's Defined Benefit Plan Fraction and Defined Contribution Plan Fraction will not exceed 1.0 in any Limitation Year. The Annual Additions which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 19 of the Adoption Agreement.

(e) Definitions.

(i) Annual Additions: The sum of the following amounts credited to a Participant's Accounts for the Limitation Year:

(1) Employer Contributions, including Elective Deferrals;

(2) Employee Contributions;

(3) Forfeitures, if applicable; and

(4) Amounts allocated, after March 31, 1984, to an individual medical account as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer are treated as Annual Additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a Key Employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund as defined in Section 419(e) of the Code maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

For this purpose, any Excess Amount applied under subsection (a) (iv) or (b) (iv) in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

(ii) Compensation: A Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the

Employer maintaining the Plan (including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:

(1) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(2) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(4) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludible from the gross income of the Employee).

For purposes of applying the limitations of this Section 5.07, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such limitation year.

Notwithstanding the preceding sentence, Compensation for a Participant in a defined contribution plan who has incurred a Disability is the Compensation such Participant would have received for the Limitation Year if the Participant was paid at the rate of Compensation paid immediately before incurring the Disability; such imputed Compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee and contributions made on behalf of such Participant are nonforfeitable when made.

(iii) Defined Benefit Fraction: A fraction, the numerator of which is the sum of the Participant's Projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the Employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the Limitation Year under Sections 415(b) and (d) of the Code or 140 percent of the Highest Average Compensation, including any adjustments under Section 415(b) of the Code.

Notwithstanding the above, if the Participant was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the Annual Benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the Plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Section

415 for all Limitation Years beginning before January 1, 1987.

(iv) Defined Contribution Dollar Limitation: $30,000 or if greater, one-fourth of the defined benefit dollar limitation set forth in Section 415(b)(1) of the Code as in effect for the Limitation Year.

(v) Defined Contribution Fraction: A fraction, the numerator of which is the sum of the Annual Additions to the Participant's accounts under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years (including the Annual Additions attributable to the Participant's nondeductible voluntary employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer, and the Annual Additions attributable to all welfare benefit funds, as defined in Section 419(e) of the Code, and individual medical accounts, as defined in Section 415(1)(2) of the Code, maintained by the Employer), and the denominator of which is the sum of the Maximum Aggregate Amounts for the current and all prior Limitation Years with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The Maximum Aggregate Amount in any Limitation Year is the lesser of 125 percent of the dollar limitation determined under Sections 415(b) and (d) of the Code in effect under Section 415(c)(1)(A) of the Code or 35 percent of the Participant's Compensation for such year.

If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this

fraction will be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

The Annual Addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all Participant contributions as Annual Additions.

(vi) Employer: For purposes of this Section 5.07, Employer shall mean the Employer that adopts this Plan, and all Controlled Group Members as that term is modified by Section 415(h) of the Code.

(vii) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(viii) Highest Average Compensation: The Average Compensation for the three consecutive Years of Service that produces the highest average. A Year of Service is the 12-consecutive month period defined in Section 11 of the Adoption Agreement.

(ix) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in Section 1(c) of the Adoption Agreement. All qualified

plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(x) Master or Prototype Plan: A Plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(xi) Maximum Permissible Amount: The maximum Annual Addition that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year shall not exceed the lesser of:

(1) The Defined Contribution Dollar limitation; or

(2) 25 percent of the Participant's Compensation for the Limitation Year.

The Compensation limitation referred to in (2) shall not apply to any contribution for medical benefits (within the meaning of Section 401(h) or 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition under Section 415(1)(1) or 419A(d)(2) of the Code.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve consecutive-month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

number of months in the short Limitation Year 12

(xii) Projected Annual Benefit: The annual retirement benefit (adjusted to an actuarially equivalent straight-life annuity if such benefit is expressed in a form other than a straight-life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the Plan assuming:

(1) the Participant will continue employment until Normal Retirement Age under the Plan (or current age, if later), and

(2) the Participant's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.

5.08 Participant-Directed Investments.

If elected by the Employer in Section 17 (a) or (b) of the Adoption Agreement, each Participant may direct the Trustee as to the type of investment to be purchased with the Participant's Accounts other than the non-vested portion of his Employer Contributions Account. Any directions to the Trustee with respect to investments shall be delivered in writing to the Trustee and shall be on a form for such purpose provided by the Trustee. Directed investments to be executed by the Trustee shall be made by the Trustee as soon as reasonably possible after actual receipt of such direction; provided, however, that the Trustee shall not be liable for any loss to the Account due to reasonable delay in the execution of such directions. Such directed investments shall be limited to those investments set forth in Section 16.03(a) hereof, and may be made without any duty to diversify. The Trustee may leave earnings on any securities so obtained for reinvestment in accordance with the direction of the Participant.

Notwithstanding the foregoing, in no event shall a directed investment of a Participant be permitted in such an investment that the Trustee, in its sole discretion, deems itself unable to administer efficiently, properly and conveniently with respect thereto; provided, however, that the Trustee's acceptance of the administration of a directed investment shall not be unreasonably withheld. Upon establishing such separate account, it shall be credited or charged only with the increases or decreases resulting from the administration and investment thereof as a separate unit, except that the Trustee shall charge against such account a pro rata portion of the fees and expenses incurred in the administration of the Plan in general, as well as the fees and expenses properly chargeable only to such segregated account. Thereafter, the value of the Accounts of a Participant who directs the segregation thereof under this Section shall be determined by reference to the value of the Accounts as of any applicable date of determination, notwithstanding any other provision of the Plan. The Trustee shall be under no duty to question any such direction of a Participant with respect to investments, nor shall the Trustee be required to review any securities or., the property held in the Account. Neither the Trustee nor the Employer shall have any liability whatsoever for any losses which may result from either the Participant's direction or any investment decision made pursuant to this Section, or for any loss which may result by reason of the failure of a Participant to make such directions. Nor shall the Trustee or the Employer have any liability or responsibility whatsoever for any disparity between the performance or rates of investment return of Participant-Directed Accounts and the Trust Fund in general. A Participant shall be entitled to direct the investment of his Account

hereunder at such time and in such manner as may be non-discriminatorily established by the Employer.

ARTICLE 6

CASH OR DEFERRED ARRANGEMENT

6.01 Salary Reduction Agreement.

(a) Unless the Employer specifies otherwise, the Salary Reduction Agreement described in Section 4.03 shall apply to each payroll period, beginning with the first payroll period after the Entry Date following the execution of the Salary Reduction 'Agreement, and continuing until such time as the Participant elects otherwise or terminates employment.

(b) The Salary Reduction Agreement may be amended by the Participant to change the amount of the Compensation reduction. A change in the amount of the Compensation reduction can be made for the first payroll period of the Plan Year next following the timely notice of change, or any other date selected by the Employer in the Adoption Agreement. Such notice of change must be filed with the Administrator prior to the date the change is effective.

(c) If elected by the Employer in the Adoption Agreement, the Salary Reduction Agreement may be amended by the Participant to increase the amount of the Compensation reduction for the last complete payroll period of the Plan Year.

(d) A separate Salary Reduction Agreement may be executed whereby the Participant elects to accept a reduction in Compensation which is attributable to a bonus.Such election may be made and the Salary Reduction Agreement executed at any time prior to the payment of the bonus.

(e) A Participant may elect to suspend the Compensation reduction at any time. A notice of suspension shall be effective until it is revoked by the Participant. A suspension revocation shall be accomplished by filing a new Salary Reduction Agreement in accordance with the terms of the Adoption Agreement.

(f) The Salary Reduction Agreement of a Participant who is a Highly Compensated Employee may be amended by the Participant to decrease the amount of the Compensation reduction for the balance of a Plan Year if a mid-year or interim Actual Deferral Percentage test indicates that the Participant will have Excess Contributions for the Plan Year.

(g) If the Employer elects in the Adoption Agreement to permit withdrawals and a Participant makes such a withdrawal, the Participant's Elective Deferrals will be suspended during the 12-month period following the withdrawal.

In accordance with Section 401(k) of the Code, all amounts withheld from a Participant's Compensation in accordance with this Section and contributed as Elective Deferrals to the Plan shall not be included in the gross income for the Participant for federal tax purposes, and shall be deemed for tax purposes to be an Employer Contribution to the Plan. Such Contributions shall be included in gross income for FICA and FUTA tax purposes.

6.02 Annual Limit on Elective Deferrals.

No Participant shall be permitted to have Elective Deferrals made under this Plan, or any other qualified plan maintained by the Employer, during any taxable year, in excess of the dollar limitation contained in

Section 402(g) of the Code in effect at the beginning of such taxable year.

If a Participant receives a hardship distribution pursuant to Section 6.16, the dollar limitation described above, for the Participant's taxable year immediately following the taxable year of the hardship distribution shall be reduced by the amount of the Participant's Elective Deferrals for the taxable year of the hardship distribution.

6.03 Distribution of Excess Elective Deferrals.

A Participant may assign to this Plan any Excess Elective Deferrals made during a taxable year of the Participant by notifying the Administrator on or before the date specified in the Adoption Agreement of the amount of the Excess Elective Deferrals to be assigned to the Plan.

Notwithstanding any other provision of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant to whose account Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year.

Definitions:

(a) "Elective Deferrals" shall mean any Employer Contributions made to the Plan at the election of the Participant, in lieu of cash Compensation, and shall include Contributions made pursuant to a Salary Reduction Agreement or other deferral mechanism. With respect to any taxable year, a Participant's Elective Deferral is the sum of all Employer

Contributions made on behalf of such Participant pursuant to an election to defer under any qualified CODA as described in Section 401(k) of the Code, any simplified employee pension cash or deferred arrangement as described in Section 402(h)(1)(B) of the Code, any eligible deferred compensation plan under Section 457 of the Code, any plan as described under Section 501(c)(18) of the Code, and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Section 403(b) of the Code pursuant to a Salary Reduction Agreement.

(b) "Excess Elective Deferrals" shall mean those Elective Deferrals that are includible in a Participant's gross income under Section 402(8) of the Code to the extent such Participant's Elective Deferrals for a taxable year exceed the dollar limitation under such Code section. Excess Elective Deferrals shall be treated as Annual Additions under the Plan.

Determination of income or loss: Excess Elective Deferrals shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Elective Deferrals is the sum of: (1) income or loss allocable to the Participant's Elective Deferral Account for the taxable year multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the year and the denominator is the Participant's Account balance attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year; and (2) ten percent of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution,

counting the month of distribution if distribution occurs after the 15th of such month.

6.04 Actual Deferral Percentage Test.

(a) The Actual Deferral Percentage'(hereinafter "ADP") for participants who are Highly Compensated Employees for each Plan Year and the ADP for Participants who are Non-highly Compensated Employees for the same Plan Year must satisfy one of the following tests:

(i) The ADP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ADP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by 1.25; or

(ii) The ADP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ADP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by 2.0, provided that the ADP for Participants who are Highly Compensated Employees does not exceed the ADP for Participants who are Nonhighly Compensated Employees by more than two (2) percentage points.

(b) Special Rules:

(i) The ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Non-elective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test) allocated to his or her accounts under two or more arrangements described in

Section 401(k) of the Code, that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Non-elective Contributions or Qualified Matching Contributions, or both) were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different Plan Years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement.

(ii) In the event that this Plan satisfies the requirements of Sections 401(k), 401(a)(4), or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ADP of employees as if all such plans were a single plan. For Plan Years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have the same Plan Year.

(iii) For purposes of determining the ADP of a Participant who is a Five-Percent Owner or one of the ten most highly-paid Highly Compensated Employees, the Elective Deferrals (and Qualified Non-elective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test) and Compensation of such Participant shall include the Elective Deferrals (and, if applicable, qualified Non-elective Contributions and Qualified Matching Contributions, or both) and Compensation for the Plan Year of Family Members (as defined in Section 414(q)(6) of the Code). Family Members, with respect to such Highly Compensated Employees, shall be disregarded as separate Employees in determining

the ADP both for Participants who are Non-highly Compensated Employees and for Participants who are Highly Compensated Employees.

(iv) For purposes of determining the ADP test, Elective Deferrals, Qualified Non-elective Contributions and Qualified Matching Contributions must be made before the last day of the twelve-month period immediately following the Plan Year to which contributions relate.

(v) The Employer shall maintain records sufficient to demonstrate satisfaction of the ADP test and the amount of Qualified Non-elective Contributions or Qualified Matching Contributions, or both, used in such test.

(vi) The determination and treatment of the ADP amounts of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(c) "Actual Deferral Percentage" shall mean, for a specified group of Participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) the amount of Employer Contributions actually paid over to the Trust Fund on behalf of such Participant for the Plan Year to (2) the Participant's Compensation for such Plan Year (whether or not the Employee was a Participant for the entire Plan Year). Employer Contributions on behalf of any Participant shall include: (1) any Elective Deferrals made pursuant to the Participant's Salary Reduction Agreement, including Excess Elective Deferrals of Highly Compensated Employees, but excluding Elective Deferrals that are taken into account in the Contribution Percentage test (provided the ADP test is satisfied both with and without exclusion of these

Elective Deferrals): and (2) at the election of the Employer, Qualified Non-elective Contributions and Qualified Matching Contributions. For purposes of computing Actual Deferral Percentages, an Employee who would be a Participant but for the failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

6.05 Distribution of Excess Contributions.

Notwithstanding any other provision of this plan, Excess Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than the last day of each Plan Year to Participants to whose Accounts such Excess Contributions were allocated for the preceding Plan Year. If such excess amounts are distributed more than 2-1/2 months after the last day of the Plan Year in which such excess amounts arose, a ten (10) percent excise tax will be imposed on the Employer maintaining the Plan with respect to such amounts. Such distributions shall be made to Highly Compensated Employees on the basis of the respective portions of the Excess Contributions attributable to each of such Employees. Excess Contributions shall be allocated to Participants who are subject to the family member aggregation rules of Section 414(q)(6) of the Code in the manner prescribed by the regulations.

Excess Contributions (including the amounts recharacterized) shall be treated as Annual Additions under the Plan.

Determination of Income or Loss: Excess Contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Contributions is the sum of: (1) income or loss allocable to the participant's Elective

Deferral Account (and, if applicable, the Qualified Non-elective Contribution account or the Qualified Matching Contributions account or both) for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Contributions for the year and the denominator is the Participant's Account balance, attributable to Elective Deferrals (and Qualified Non-elective Contributions or Qualified Matching Contributions, or both, if any of such contributions are included in the ADP test) without regard to any income or loss occurring during such Plan Year; and (2) ten percent of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.

Accounting for Excess Contributions: Excess Contributions shall be distributed from the Participant's Elective Deferral Account and Qualified Matching Contribution account (if applicable) in proportion to the Participant's Elective Deferrals and Qualified Matching Contributions (to the extent used in the ADP test) for the Plan Year. Excess Contributions shall be distributed from the Participant's Qualified Non-elective Contribution Account only to the extent that such Excess Contributions exceed the balance in the Participant's Elective Deferral Account and Qualified Matching Contribution Account.

"Excess Contributions" shall mean, with respect to any Plan Year, the excess of:

(a) The aggregate amount of Employer Contributions actually taken into account in computing the ADP of

Highly Compensated Employees for such Plan Year, over

(b) The maximum amount of such Contributions permitted by the ADP test (determined by reducing Contributions made on behalf of Highly Compensated Employees in order of the ADPs, beginning with the highest of such percentages).

6.06 Recharacterization.

If the Employer elects in Section 24, Item 7 of the Adoption Agreement to permit Employees to make Voluntary Nondeductible Contributions to the Plan, a Participant may treat his or her Excess Contributions as an amount distributed to the Participant and then contributed by the Participant to the Plan. Recharacterized amounts will remain nonforfeitable and subject to the same distribution requirements as Elective Deferrals. Amounts may not be recharacterized by a Highly Compensated Employee to the extent that such amount in combination with other Employee Contributions made by that Employee would exceed any stated limit under the plan on Employee Contributions.

Recharacterization must occur no later than two and one-half months after the last day of the Plan Year in which such Excess Contributions arose and is deemed to occur no earlier than the date the last Highly Compensated Employee is informed in writing of the amount recharacterized and the consequences thereof. Recharacterized amounts will be taxable to the Participant for the Participant's tax year in which the Participant would have received them in cash.

6.07 Voluntary Non-deductible Contributions.

If elected by the Employer in Section 24, Item 7 of the Adoption Agreement, Employees will be permitted to make Voluntary Non-deductible Contributions to the Plan. Voluntary Non-deductible Contributions shall be maintained in a separate Account pursuant to Section 5.01(b).

6.08 Matching Contributions.

If elected by the Employer in Section 24, Item 8 of the Adoption Agreement, the Employer will make Matching Contributions to the Plan. Matching Contributions will be maintained in a separate Account pursuant to Section 5.01(c).

6.09 Forfeitures and Vesting of Matching Contributions.

Matching Contributions shall be vested in accordance with Section 24, Item 9 of the Adoption Agreement. In any event, Matching Contributions shall be fully vested at Normal Retirement Age, upon the complete or partial termination of the profit-sharing plan, or upon the complete discontinuance of Employer Contributions.

Forfeitures of Matching Contributions, other than Excess Aggregate Contributions, shall be made in accordance with Section 5.04.

6.10 Qualified Matching Contributions.

If elected by the Employer in Section 24, Item 4 of the Adoption Agreement, the Employer will make Qualified Matching Contributions to the Plan.

"Qualified Matching Contributions" shall mean matching Contributions which are subject to the distribution and nonforfeitability requirements under Section 401(k) of the Code when made.

6.11 Limitations on Employee Contributions and Matching Contributions.

(a) The ACP for Participants who are Highly Compensated Employees for each Plan Year and the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year must satisfy one of the following tests:

(i) The ACP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by 1.25; or

(ii) The ACP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by two (2), provided that the ACP for Participants who are Highly Compensated Employees does not exceed the ACP for Participants who are Non-highly Compensated Employees by more than two (2) percentage points.

(b) Special Rules:

(i) Multiple Use: If one or more Highly Compensated Employees participate in both a CODA and a plan subject to the ACP test maintained by the Employer and the sum of the ADP and ACP of those Highly Compensated Employees subject to either or both tests

exceeds the Aggregate Limit, then the ACP of those Highly Compensated Employees who also participate in a CODA will be reduced (beginning with such Highly Compensated Employee whose ACP is the highest) so that the limit is not exceeded. The amount by which each Highly Compensated Employee's Contribution. Percentage Amounts is reduced shall be treated as an Excess Aggregate Contribution. The ADP and ACP of the Highly Compensated Employees are determined after any corrections required to meet the ADP and ACP tests. Multiple use does not occur if either the ADP and ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP of the Non-highly Compensated Employees.

(ii) For purposes of this Section, the Contribution Percentage for any Participant who is a Highly Compensated Employee and who is eligible to have Contribution Percentage Amounts allocated to his or her account under two or more plans described in Section 401(a). of the Code, or arrangements described in Section 401(k) of the Code that are maintained by the Employer, shall be determined as if the total of such Contribution Percentage Amounts was made under each plan. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement.

(iii) In the event that this Plan satisfies the requirements of Sections 401(m), 401(a)(4) or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the Contribution 'Percentage

of employees as if all such plans were a single plan. For plan years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Code only if they have the same plan year.

(iv) For purposes of determining the Contribution Percentage of a Participant who is a Five-Percent Owner or one of the ten most highly-paid Highly Compensated Employees, the Contribution Percentage Amounts and Compensation of such Participant shall include the Contribution Percentage Amounts and Compensation for the Plan Year of Family Members (as defined in Section 414(q)(6) of the Code). Family Members, with respect to Highly Compensated Employees, shall be disregarded as separate Employees in determining the Contribution Percentage both for Participants who are Non-highly Compensated Employees and for Participants who are Highly Compensated Employees.

(v) For purposes of determining the Contribution Percentage test, Employee Contributions are considered to have been made in the Plan Year in which contributed to the trust. Matching Contributions and Qualified Non-elective Contributions will be considered made for a Plan Year if made no later than the end of the twelve-month period beginning on the day after the close of the Plan Year.

(vi). The Employer shall maintain records sufficient to demonstrate satisfaction of the ACP test and the amount of Qualified Non-elective Contributions or Qualified Matching Contributions, or both, used in such test.

(vii) The determination and treatment of the Contribution Percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(c) Definitions:

(i) "Aggregate Limit" shall mean the sum of (1) 125 percent of the greater of the ADF of the Non-highly Compensated Employees for the Plan Year or the ACP of Non-highly Compensated Employees under the Plan subject to Section 401(m) of the Code for the Plan Year beginning with or within the Plan Year of the CODA and (2) the lesser of 200%, or two plus the lesser of such ADP or ACP. "Lesser" is substituted for "greater" in ("1"), above, and "greater" is substituted for "lesser" after "two plus the" in "(2)" if it would result in a larger Aggregate Limit.

(ii) "Average Contribution Percentage" shall mean the average of the Contribution Percentages of the Eligible Participants in a group.

(iii) "Contribution Percentage" shall mean the ratio (expressed as a percentage) of the Participant's Contribution Percentage Amounts to the Participant's Compensation for the Plan Year (whether or not the Employee was a Participant for the entire Plan Year).

(iv) "Contribution Percentage Amounts" shall mean the sum of the Employee Contributions, Matching Contributions, and Qualified Matching Contributions (to the extent not taken into account for purposes of the ADP test) made under the Plan on behalf of the Participant for the Plan Year. Such Contribution Percentage Amounts shall include Forfeitures of Excess Aggregate Contributions or Matching

Contributions allocated to the Participant's Account which shall be taken into account in the year in which such Forfeiture is allocated. If so elected in the Adoption Agreement the Employer may include Qualified Non-elective Contributions in the Contribution Percentage Amounts. The Employer also may elect to use Elective Deferrals in the Contribution Percentage Amounts so long as the A.DP test is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test.

(v) "Eligible Participant" shall mean any Employee who is eligible to make an Employee Contribution, or an Elective Deferral (if the Employer takes such Contributions into account in the calculation of the Contribution Percentage), or to receive a Matching Contribution (including Forfeitures) or a Qualified Matching Contribution. If an Employee Contribution is required as a condition of participation in the Plan, any Employee who would be a Participant in the Plan if such employee made such a contribution shall be treated as an eligible participant on behalf of whom no Employee Contributions are made.

(vi) "Employee Contribution" shall mean any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is maintained under a separate account to which earnings and losses are allocated.

(vii) "Matching Contribution" shall mean an Employer Contribution made to this or any other defined contribution plan on behalf of a Participant on account of an Employee Contribution made by such Participant,

or on account of a Participant's Elective Deferral, under a plan maintained by the Employer.

6.12 Distribution of Excess Aggregate Contributions.

Notwithstanding any other provision of this Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than the last day of each Plan Year to Participants to whose Accounts such Excess Aggregate Contributions were allocated for the preceding Plan Year. Excess Aggregate Contributions shall be allocated to Participants who are subject to the Family Member aggregation rules of Section 414(q)(6) of the Code in the manner prescribed by the regulations. If such Excess Aggregate Contributions are distributed more than 2-1/2 months after the last day of the Plan Year in which such excess amounts arose, a ten (10) percent Excise tax will be imposed on the Employer maintaining the Plan with respect to those amounts. Excess Aggregate Contributions shall be treated as Annual Additions under the Plan.

Determination of Income or Loss: Excess Aggregate Contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Aggregate Contributions is the sum of: (a) income or loss allocable to the Participant's Voluntary Contributions Account, Matching Contributions Account (if any, and if all amounts therein are not used in the ADP test) and, if applicable, Qualified Non-elective Contribution Account and Elective Deferral Account for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Aggregate Contributions for the Year and the denominator is the Participant's Account

balances) attributable to Contribution Percentage Amounts without regard to any income or loss occurring during such Plan Year; and (b) ten percent of the amount determined under (a) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.

Forfeitures of Excess Aggregate Contributions: Forfeitures of Excess Aggregate Contributions may either be reallocated to the Accounts of Non-highly Compensated Employees or applied to reduce Employer Contributions, as elected by the Employer in Section 24, Item 10(d) of the Adoption Agreement.

Accounting for Excess Aggregate Contributions: Excess Aggregate Contributions shall be forfeited, if forfeitable or distributed on a pro-rata basis from the Participant's Voluntary Contributions Account, Matching Contributions Account, and Qualified Matching Contributions Account (and, if applicable, the Participant's Qualified Non-elective Contributions Account or Elective Deferral Account, or both).

"Excess Aggregate Contributions" shall mean, with respect to any Plan Year, the excess of:

(a) The aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over

(b) The maximum Contribution Percentage Amounts permitted by the ACP test (determined by reducing contributions made on behalf of Highly Compensated

Employees in order of their Contribution Percentages beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals pursuant to Section 6.03 and then determining Excess Contributions pursuant to Section 6.05.

6.13 Qualified Non-elective Contributions.

The Employer may elect to make Qualified Non-elective Contributions under the Plan on behalf of Employees as provided in Section 24, Item 3 of the Adoption Agreement.

In addition, in lieu of distributing Excess Contributions as provided in Section 6.05, or Excess Aggregate Contributions as provided in Section 6.12 of the Plan, and to the extent elected by the Employer in Section 24, Item 3 of the Adoption Agreement, the Employer may make Qualified Non-elective Contributions on behalf of Non-highly Compensated Employees that are sufficient to satisfy either the Actual Deferral Percentage test or the Average Contribution Percentage test, or both, pursuant to regulations under the Code.

"Qualified Non-elective Contributions" shall mean contributions (other than Matching Contributions or Qualified Matching Contributions) made by the Employer and allocated to Participants' Accounts that the Participants may 'not elect to receive in cash until distributed from the Plan; that are nonforfeitable when made; and that are distributable only in accordance with the distribution provisions that are applicable to Elective Deferrals and Qualified Matching Contributions.

6.14 Nonforfeitability and Vesting.

The Participant's accrued benefit derived from Elective Deferrals, Qualified Non-elective Contributions, Employee Contributions, and Qualified Matching Contributions is nonforfeitable. Separate Accounts for Elective Deferrals, Qualified Non-elective Contributions, Employee Contributions, Matching Contributions, and Qualified Matching Contributions will be maintained for each Participant. Each Account will be credited with the applicable contributions and earnings thereon.

6.15 Distribution Requirements.

Elective Deferrals, Qualified Non-elective Contributions, and Qualified Matching Contributions, and income allocable to each are not distributable to a Participant or his or her Beneficiary or Beneficiaries, in accordance with such Participant's or Beneficiary or Beneficiaries election, earlier than Termination of Employment, death, or Disability.

Such amounts may also be distributed upon:

(a) Termination of the Plan without the establishment of another defined contribution plan.

(b) The disposition by a corporation to an unrelated corporation of substantially all of the assets (within the meaning of Section 409(d)(2) of the Code) used in a trade or business of such corporation if such corporation continues to maintain this Plan after the disposition, but only with respect to Employees who continue employment with the corporation acquiring such assets.

(c) The disposition by a corporation to an unrelated entity of such corporation's interest in a subsidiary (within the meaning of Section 409(d)(3) of the Code) if such corporation continues to maintain this Plan, but only with respect to Employees who continue employment with such subsidiary.

(d) The attainment of age 59-1/2 in the case of a profit-sharing plan.

(e) The hardship of the participant as described in Section 6.15.

All distributions that may be made pursuant to one or more of the foregoing distributable events are subject to the spousal and Participant consent requirements (if applicable) contained in Sections 401(a)(11) and 417 of the Code.

6.16 Hardship Distribution.

Distribution of Elective Deferrals (and earnings thereon accrued as of December 31, 1988) may be made to a Participant in the event of hardship. For the purposes of this Section, hardship is defined as an immediate and heavy financial need of the Employee where such Employee lacks other available resources. Hardship distributions are subject to the spousal consent requirements contained in Sections 401(a)(11) and 417 of the Code.

Special Rules:

(a) The following are the only financial needs considered immediate and heavy: deductible medical expenses (within the meaning of Section 213(d) of the Code) of the Employee, the Employee's Spouse,

children, or dependents; the purchase (excluding mortgage payments) of a principal residence for the Employee; payment of tuition for the next quarter or semester of postsecondary education for the Employee, the Employee's Spouse, children or dependents; or the need to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence.

(b) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Employee only if:

(i) The Employee has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer;

(ii) All plans maintained by the Employer provide that the Employee's Elective Deferrals (and Employee Contributions) will be suspended for twelve months after the receipt of the hardship distribution;

(iii) The distribution is not in excess of the amount of an immediate and heavy financial need; and

(iv) All plans maintained by the Employer provide that the Employee may not make Elective Deferrals for the Employee's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Section 402(g) of the Code for such taxable year less the amount of such Employee's Elective Deferrals for the taxable year of the hardship distribution.

6.17 Top-Heavy Requirements.

Neither Elective Deferrals nor Matching Contributions may be taken into account for the purpose of satisfying the minimum top-heavy contribution requirement.

ARTICLE 7

RETIREMENT BENEFITS

7.01 Normal Retirement.

Each Participant shall be eligible to retire on his Normal Retirement Date. Such Participant's Account balance shall be paid in accordance with ARTICLES 10 and 11. Notwithstanding the other requirements of this Plan, a Participant who attains his Normal Retirement Age may retire on his Normal Retirement Date or may elect to continue in Service subject to the Employer's retirement policy, if any, and the provisions of the Age Discrimination in Employment Act of 1986. If such Participant continues in Service, then he shall be eligible to continue in all respects as a Participant in the Plan until his actual retirement. Subject to Section 10.07, no retirement benefit shall be payable until actual retirement unless such Participant who could take normal retirement requests that his retirement benefits commence before his actual retirement. In such case, the Committee shall direct the Trustee to commence payment of retirement benefits as soon as practicable following such request.

7.02 Early Retirement.

If a Participant's Termination of Employment occurs before the Participant attains his Normal Retirement Age, but after he has attained his Early Retirement Age as set forth in Section 13(b) of the Adoption Agreement, if applicable, and he has completed the required Years of Service set forth in such Section, if any, the Participant shall be entitled to an Early Retirement Benefit equal to the value of his Accounts.

If the Employer elected both an age and Service requirement for Early Retirement in Section 13 of the Adoption Agreement and a Participant's Termination of Employment occurs before he satisfies the age requirement for Early Retirement, but after he satisfies the Service requirement, the Participant will be entitled to elect an Early Retirement Benefit upon satisfaction of such age requirement. Such Account balance shall be paid in accordance with ARTICLES 10 and 11.

7.03 Disability Retirement.

A Participant who has incurred a Disability shall be eligible to retire on the first day of the month next following the Employer's determination of the Employee's Disability. Notwithstanding the vesting schedule elected by the Employer in Section 11 of the Adoption Agreement, an Employee's right to his or her Account balance shall be nonforfeitable in the event of Disability. Such Account balance shall be paid in accordance with ARTICLES 10 and 11.

ARTICLE 8

DEATH BENEFITS

8.01 Death Benefit.

In the event of the death of a Participant before his retirement, as provided in ARTICLE 7, or other Termination of Employment prior to any distribution to him of his Accounts, 100 percent of the balance of the Participant's Accounts shall be paid as provided below, less any amounts to be paid pursuant to ARTICLE 11:

(a) If the Plan is a profit-sharing plan, then, at the direction of the Committee, the Trustee shall pay the death benefit pursuant to Section 10.10 to the deceased Participant's surviving Spouse unless there is a Qualified Election, as defined in Section 11.04(c), and, in that case, to the party or parties designated as Beneficiary.

(b) If the Plan is a money purchase pension plan, then the Trustee shall pay the death benefit pursuant to Section 10.10.

8.02 Insured Death Benefit.

An additional Death Benefit may be provided through the purchase of life insurance policies if, and as, so provided in Section 18 of the Adoption Agreement.

(a) Governing Provisions. The following provisions shall govern the purchase and administration of life insurance policies hereunder:

(i) Each Participant may request the Employer to purchase ordinary life, term or universal life insurance policies on his life as follows:

(1) Ordinary life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and nonincreasing premiums. If such contracts are purchased, less than 1/2 of the aggregate Employer Contributions allocated to any Participant will be used to pay the premiums attributable to them.

(2) Term and universal life - No more than 1/4 of the aggregate Employer Contributions allocated to any Participant will be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(3) Combination - The sum of 1/2 of the ordinary life insurance premiums and all other life insurance premiums will not exceed 1/4 of the aggregate Employer Contributions allocated to any Participant.

(ii) Subject' to ARTICLE 11, the contracts on a Participant's life will be converted to cash or an annuity or distributed to the Participant upon commencement of benefits.

(iii) The Trustee shall apply for and will be the owner of any insurance contract purchased under the terms of this Plan. The insurance contract(s) must provide that proceeds will be payable to the Trustee, however the Trustee shall be required to pay over all proceeds of the contract(s) to the Participant's designated Beneficiary in accordance with the distribution provisions of this Plan. A Participant's Spouse will be

the designated Beneficiary of the proceeds in all circumstances unless a Qualified Election has been made in accordance with Section 11.04(c), if applicable. Under no circumstances shall the Trust Fund retain any part of the proceeds. In the event of any conflict between the terms of this Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

(iv) Any dividends or credits earned on life insurance policies will be allocated to the Accounts derived from Employer Contributions for whose benefit the policy is held to reduce premium payments.

(v) Policies shall be purchased for a Participant only if he provides such evidence of insurability as may be required by the insurer. If he is not insurable at standard rates, the policy purchased shall be for such face amount as can be provided by the amount of premium which would have been paid if the Participant had been insurable at standard rates. If the Participant is uninsurable, then no policies shall be purchased.

(vi) Additional life insurance policies shall be purchased as of any premium due date only if the face amount of each additional policy will be at least $1,000.

(vii) Upon a Participant's Termination of Employment other than by death or Normal, Early 'or Disability Retirement, any nonvested portion of the cash value of any life insurance policy shall be subject to Forfeiture and treated in the manner provided in Section 5.04 hereof.

(b) Vesting and Disposition of Policies.

(i) If there are no Employee Contributions, the cash value of any life insurance policies issued on the life of a Participant shall be vested as provided in Section 11 of the Adoption Agreement, but the Trustee shall offer the policies to the Participant upon his Termination of Employment for any reason other than death or retirement in exchange for an amount equal to the nonvested portion of the total cash value of the policies, if such amount is paid to the Trustee within 30 days of the date such policies are offered to the Participant. Subject to the requirements of ARTICLE 11, if the policies are distributed to him upon his Termination of Employment without payment by the Participant of the nonvested portion of the cash value thereof, such portion shall be charged to the Participant's Employer Contributions Account.

(ii) If there are Employee Contributions, the portion of the cash value of any life insurance policies which is attributable to Employee Contributions shall be 100 percent vested. The portion attributable to Employee Contributions shall be equal to the percentage of said cash value which equals (1) the sum of Employee Contributions applied to the payment of premiums on said policies divided by (2) the total premiums paid on said policies. The balance of the cash value of the life insurance policies which is attributable to the Employer Contributions shall be vested as provided in Section 11 of the Adoption Agreement. The Trustee shall offer the policies to the Participant upon his Termination of Employment for any reason other than death or retirement in exchange for an amount equal to the total nonvested portion of the cash value of the policies, if such amount is paid to the Trustee within a reasonable time after the date of his Termination of Employment. Subject to the provisions of ARTICLE 11, if the policies are distributed to him upon his

Termination of Employment without payment by the Participant of the nonvested portion of the cash value thereof, such portion shall be charged to the Participant's Employer Contributions Account.

(iii) Any policies on the life of a Participant, the premiums for which have been paid entirely by Employee Contributions, shall be vested in him upon Termination of Employment and shall be in addition to all other benefits provided by the Plan.

ARTICLE 9

BENEFITS ON SEPARATION FROM SERVICE

9.01 Vested Benefit.

(a) If at a Participant's Termination of Employment for reasons other than on account of his death he then does not become entitled to a benefit under ARTICLE 7, he may be entitled to a Vested Benefit under this Section. Such Vested Benefit shall be equal to the nonforfeitable percentage of his Employer derived Account balance determined in accordance with the vesting schedule selected in Section 11 of the Adoption Agreement. Notwithstanding such vesting schedule, an Employee's right to his or her other Account balances shall be nonforfeitable upon the attainment of Normal Retirement Age. Employee-derived Account balances shall be nonforfeitable at all times.

(b) In the case of a Participant who has five (5) or more consecutive one (1) year Breaks in Service, all Years of Service after such Breaks in Service will be disregarded for the purpose of vesting the Employer-derived Account balance that accrued before such Breaks in Service. Such Participant's pre-break Service will count in resting the post-break Employer-derived Account balance only if either:

(i) such Participant has any nonforfeitable interest in the Account balance attributable to Employer Contributions at the time of Termination of Employment; or

(ii) upon returning to Service the number of consecutive one (1) year Breaks in Service is less than the number of Years of Service.

Separate Accounts will be maintained for the Participant's pre-break and post-break Employer-derived Account balance. Both Accounts will share in the earnings and losses of the Trust Fund.

9.02 Forfeitures.

If a Participant incurs a Termination of Employment, the non-vested portion of the Participant's Employer Account or Matching Account, pursuant to Section 9.01, shall be forfeited on the earlier of the following dates:

(a) the date the Participant receives a distribution of the entire vested balance of such Accounts, pursuant to ARTICLE 10; or

(b) the date the Participant incurs his fifth consecutive one-year Break in Service.

ARTICLE 10

PAYMENT OF BENEFITS

10.01 Payment of Benefits.

(a) The determination as to the value of an Account with respect to any benefit hereunder to which a Participant, Retired Participant or Beneficiary shall have become entitled shall be based on the balance in the Account on the Allocation Date preceding the date benefits are paid or commence to be paid, plus contributions allocated to his Account after such Allocation Date, less any payments from such Account since such Allocation Date.

(b) Before payment of any benefit hereunder, written application therefore shall be made by the Participant or Beneficiary, as the case may be, and submitted to the Employer in such form and manner as the Employer shall uniformly prescribe. Any payment made in accordance with the provisions of the Plan to a Participant or Beneficiary, or to their legal representative shall, to the extent of the method of computation as well as the amount thereof, constitute full satisfaction of all claims hereunder against the Trustee, the Administrator and the Employer, any of whom may require such Participant, Beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Trustee, the Administrator or the Employer, as the case may be. In the event any benefits are distributed in the form of annuity contracts, any such contract or contracts shall be endorsed as nontransferable.

10.02 Time of Payment.

Payment of benefits under the Plan shall commence in accordance with the following:

(a) Payment of benefits provided in ARTICLE 7 or ARTICLE 8 shall commence after the value of the Participant's Accounts shall have been determined following the date the Participant is eligible to receive such benefits.

(b) Payment of benefits provided in Section 7.03 or ARTICLE 9 shall commence at the time selected by the Employer pursuant to Section 13(d) of the Adoption Agreement.

(c) Notwithstanding the foregoing, unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which:

(i) the Participant attains age 65 (or Normal Retirement Age, if earlier);

(ii) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or,

(iii) occurs the Participant's Termination of Employment.

Notwithstanding the foregoing, the failure of a Participant and Spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 10.03, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section.

10.03 Restrictions on Immediate Distribution.

(a) If the value of a Participant's vested Account balance derived from Employer and Employee Contributions exceeds (or at the time of any prior distribution exceeded) $3,500, and the Account balance is immediately distributable, the Participant and the Participant's Spouse (or where either the Participant or the Spouse has died, the survivor) must consent to any distribution of such Account balance. The consent of the Participant and the Participant's Spouse shall be obtained in writing within the 90-day period ending on the Annuity Starting Date. The Annuity Starting Date is the first day. of the first period for which an amount is paid as an annuity or any other form. The Administrator shall notify the Participant and the Participant's Spouse of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values. of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Section 417(a)(3) of the Code, and shall be provided no less than 30 days and no more than 90 days prior to the Annuity Starting Date.

(b) Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity while the Account balance is immediately distributable. (Furthermore, if payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to the Participant pursuant to Section 11.06 of the Plan, only the Participant need consent to the distribution of an Account balance that is immediately distributable.) Neither the consent of the Participant nor the Partici-

pant's Spouse shall be required to the extent that a distribution is required to satisfy Section 401(a)(9) or 415 of the Code. In addition, upon termination of this Plan if the Plan does not offer an annuity option (purchased from a commercial provider), the Participant's Account balance may, without the Participant's consent, be distributed to the Participant or transferred to another defined contribution plan (other than an employee stock ownership plan as defined in Section 4975(e)(7) of the Code) within the same controlled group.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving Spouse) before the Participant attains or would have attained if not deceased) the later of Normal Retirement Age or age 62.

(c) For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first Plan Year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated Deductible Contributions within the meaning of Section 72(o)(5)(B) of the Code.

10.04 Termination of Employment Prior to Early Retirement.

(a) If, at an Employee's Termination of Employment, the value of the Employee's vested Account balance derived from Employer and Employee Contributions is not greater than $3,500, the Employee will receive a distribution of the value of the entire vested portion of such Account balance and the nonvested portion will be treated as a Forfeiture. For purposes of this Section, if the value of an Employee's vested Account balance is

zero, the Employee shall be deemed to have received a distribution of such vested Account balance. A Participant's vested Account balance shall not include accumulated Deductible Contributions within the meaning of Section 72(o)(5)(B) of the Code for Plan Years beginning prior to January 1, 1989.

(b) If, at an Employee's Termination of Employment, the Employee elects, in accordance with the requirements of Section 10.03, to receive the value of his vested Account balance, the nonvested portion will be treated as a Forfeiture. If the Employee elects to have distributed less than the entire vested portion of the Account balance derived from Employer Contributions, the part of the nonvested portion that will be treated as a Forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the 'amount of the distribution attributable to Employer Contributions and the denominator of which is the total value of the vested Employer derived Account balance.

(c) If an Employee receives a distribution pursuant to this Section and the Employee resumes employment covered under this Plan, the Employee's Employer-derived Account balance will be restored to the amount on the date of distribution if the Employee repays to the Plan the full amount of the distribution attributable to Employer Contributions before the earlier of 5 years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs 5 consecutive 1-year Breaks in Service following the date of the distribution. If an Employee is deemed to receive a distribution pursuant to this Section, and the Employee resumes employment covered under this Plan before the date the Participant incurs 5 consecutive 1-year Breaks in Service, upon the

reemployment of such Employee, the Employer-derived Account balance of the Employee will be restored to the amount on the date of such deemed contribution.

10.05 Withdrawal from Employer Account (Non-Integrated Profit-Sharing Plans Only).

(a) The Administrator of a non-integrated profit-sharing plan may adopt a policy which allows a Participant to withdraw all or any part of his vested interest from his Employer Contributions Account and/or his Rollover Account; provided, however, that the policy shall allow withdrawals only:

(i) from monies that have been in the Plan for at least two years, or

(ii) if the Participant has financial need due to a hardship.

(b) In the event the Administrator adopts a withdrawal policy, it shall be communicated to all Participants and shall allow withdrawals in a uniform, non-discriminatory manner. If the policy allows withdrawals for hardships, it may include, but is not limited to, expenses incurred by the Participant for:

(i) education, illness, medical treatment or hospitalization for the Participant, his Spouse, their respective parents or dependent children,

(ii) the purchase of a home,

(iii) a casualty loss, or

(iv) an unexpected or unusual expense.

(c) In the event the Administrator adopts a policy allowing withdrawals, and a Participant withdraws funds from his Employer Contributions Account which are less than 100 percent vested at the time of withdrawal, the Committee shall establish a separate Account for the Participant and the Participant's vested portion of the separate Account shall not at any relevant time be less than an account ("X") determined by the formula: X = P(AB = (R x D)) - (R x D). For purposes of applying the formula, P is the vested percentage at the relevant time; D is the amount of the distributions; R is the ratio of the Account balance at the relevant time to the Account balance after withdrawal; and the relevant time is the time at which, under the Plan, the vested percentage in the Account cannot increase.

10.06 Distribution Requirements.

(a) Subject to ARTICLE 11, the requirements of this Section shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section apply to calendar years beginning after December 31, 1984.

(b) All distributions required under this Section shall be determined and made in accordance with the Proposed Regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of Section 1.401(x)(9)-2 of the Proposed Regulations.

(c) Except as provided in subsection (d), the Participant shall, subject to the requirements of ARTICLE 11, select the method of payment of benefits from his

Accounts. The optional forms of benefit provided by this Plan are as follows: . (i) a lump-sum distribution, (ii) substantially equal, periodic, monthly, quarterly, semi-annual or annual installments over a period not exceeding the life expectancy of the Participant or the life expectancy of the Participant and his designated Beneficiary, or (iii) the purchase of a single premium non-transferable annuity contract from a life insurance company, or (iv) in the case of a profit-sharing plan, non-periodic installments to the extent this method complies with Section 401(x)(9) of the Code and Regulations thereunder; provided, however, that if the contract provides for continuance of annuity payments after a Participant's death to a Beneficiary other than the Participant's Spouse, the value of such death benefit shall be less than the value of the Participant's annuity.

(d) In the case of a profit-sharing plan or distribution that meets the safe-harbor requirements pursuant to Section 11.06, the optional forms of benefit provided by this Plan are as follows: (i) a lump-sum distribution, (ii) substantially equal, periodic, monthly, quarterly, semi-annual or annual installments over a period not exceeding the life expectancy of the Participant or the life expectancy of the Participant and his designated Beneficiary, or (iii) non-periodic installments to the extent this method complies with Section 401(a)(9) of the Code and Regulations thereunder.

If the Participant elects to receive his benefits over a period in excess of the Participant's then life expectancy, the then present value of the payments to be made over the period of the Participant's then life expectancy must be more than 50 percent of the then

present value of the total payments to be made to the Participant and his Beneficiary.

10.07 Required Beginning Date.

The entire interest of a participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date (defined below).

10.08 Limits on Distribution Periods.

As of the first Distribution Calendar Year (defined below), distributions, if not made in a single-sum,. may only be made over one of the following periods (or a combination thereof):

(a) the life of the Participant,

(b) the life of the Participant and a designated Beneficiary,

(c) a period certain not extending beyond the life expectancy of the Participant, or

(d) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.

10.09 Determination of Amount to be Distributed Each Year.

If the Participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the Required Beginning Date:

(a) Individual account.

(i) If a Participant's benefit is' to be distributed over (1) a period not extending beyond the Life Expectancy (defined below) of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or (2) a period not extending beyond the Life Expectancy of the designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year, must at least equal the quotient obtained by dividing the Participant's benefit by the applicable Life Expectancy.

(ii) For calendar years beginning before January 1, 1989, if the Participant's Spouse is not the designated Beneficiary, the method of distribution selected must assure that at least fifty (50) percent of the present value of the amount available for distribution is paid within the Life Expectancy of the Participant.

(iii) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (1) the Applicable Life Expectancy or (2) if the Participant's Spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of Section 1.401(a) (9)-2 of the Proposed Income Tax Regulations. Distributions after the death of the Participant shall be distributed using the applicable Life Expectancy in subsection (i) as the relevant divisor without regard to Regulations Section 1.401(a)(9)-2.

(iv) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Employee's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

(b) Other forms. If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the proposed regulations thereunder.

10.10 Death Distribution Provisions.

(a) Distribution beginning before death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

(b) Distribution beginning after death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (i) or (ii) below:

(i) if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made

over the life or over a period certain not greater than the Life Expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died,

(ii) if the designated Beneficiary is the Participant's surviving Spouse, the date distributions are required to begin in accordance with (i) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant died and (2) December 31 of the calendar year in which the Participant would have attained age 70-1/2.

If the Participant has not made. an election pursuant to this subsection (b) by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (A) December 31 of the calendar year in which distributions would be required to begin under this Section, or (B) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) For, purposes of subsection (b), if the surviving Spouse dies after the Participant, but before payments to such Spouse begin, the provisions of subsection (b), with the exception of paragraph (ii) therein, shall be applied as if the surviving Spouse were the Participant.

(d) For purposes of this Section 10.10, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.

(e) For the purposes of this Section 10.10, distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date (or, if subsection (c) is applicable, the date distribution is required to begin to the surviving Spouse pursuant to subsection (b)). If distribution in the form of an annuity irrevocably commences to the Participant before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

10.11 Definitions.

(a) Applicable Life Expectancy: The Life Expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or designated Beneficiary) as of the Participant's (or designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date Life Expectancy was first calculated. If Life Expectancy is being recalculated, the applicable Life Expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first Distribution Calendar Year, and if Life Expectancy is being recalculated such succeeding calendar year.

(b) Designated Beneficiary: The individual who is designated as the Beneficiary under the Plan in accordance with Section 401(a)(9) of the Code and the regulations thereunder.

(c) Distribution Calendar Year: A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 10.10.

(d) Life Expectancy: Life Expectancy and Joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.

Unless otherwise elected by the Participant (or Spouse, in the case of distributions described in Section 10.10-(b)(ii)) by the time distributions are required to begin, Life Expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant (or Spouse) and shall apply to all subsequent years. The Life Expectancy of a nonspouse Beneficiary may not be recalculated.

(e) Participant's benefit.

(i) The account balance as of the last Allocation Date in the calendar year immediately preceding the Distribution Calendar Year (Allocation Calendar Year) increased by the amount of any Contributions or Forfeitures allocated to the Account balance as of dates in the Allocation Calendar Year after the Allocation Date and decreased by distributions made in the Allocation Calendar Year after the Allocation Date.

(ii) Exception for second Distribution Calendar Year. For purposes of paragraph (i), if any portion of the minimum distribution for the first Distribution Calendar Year. is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it had been made in the immediately preceding Distribution Calendar Year.

(f) Required Beginning Date.

(i) General rule. The Required Beginning Date of a Participant is the first day of April of the calendar year following the calendar year in which the Participant attains age 70-1/2.

(ii) Transitional rules. The Required Beginning Date of a Participant who attains age 70-1/2 before January 1, 1988, shall be determined in accordance with (1) or (2) below:

(1) Non-Five-Percent Owners. The Required Beginning Date of a Participant who is not a Five-Percent owner is the first day of April of the calendar year following the calendar year in which the later of retirement or attainment of age 70-1/2 occurs.

(2) Five-Percent Owners. The Required Beginning Date of a Participant who is a Five-Percent Owner during any year beginning after December 31, 1979, is the first day of April following the later of:

(A) the calendar year in which the Participant attains age 70-1/2, or

(B) the earlier of the calendar year with or within which ends the Plan Year in which the Participant becomes a Five-Percent Owner, or the calendar year in which the Participant retires.

The Required Beginning Date of a Participant who is not a Five-Percent owner who attains age 70-1/2 during 1988 and who has not retired as of January 1, 1989, is April 1, 1990.

(iii) Five-Percent Owner. A Participant is treated as a Five-Percent Owner for purposes of this Section if such Participant is a Five-Percent Owner as defined in Section 416(1) of the Code (determined in accordance with Section 416 of the Code but without regard to whether the Plan is Top-Heavy) at any time during the Plan Year ending with or within the calendar year in which such Five-Percent Owner attains age 66-1/2 or any subsequent Plan Year.

(iv) Once distributions have begun to a FivePercent Owner under this Section, they must continue to be distributed, even if the Participant ceases to be a Five-Percent Owner in a subsequent year.

10.12 Transitional Rule.

(a) Notwithstanding the other requirements of this ARTICLE and subject to the requirements of ARTICLE 11, distribution on behalf of any Employee, including a Five-Percent Owner, may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(i) The distribution by the trust is one which would not have disqualified such trust under Section 401(a) (9) of

the Code as in effect prior to amendment by the Deficit Reduction Act of 1984.

(ii) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the trust is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.

(iii) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.

(iv) The Employee had accrued a benefit under the Plan as of December 31, 1983.

(v) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.

(b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.

(c) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution

was specified in writing and the distribution satisfies the requirements in subsections (a)(i) and (v).

(d) If a designation is revoked any subsequent distribution must satisfy the requirements of Section 401(a)(9) of the Code and the proposed regulations thereunder. If a designation is revoke d subsequent to the date distributions are required to begin, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Section 401(a)(9) of the Code and the proposed regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in Section 1.401(a)(9)-2 of the proposed regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from. one plan to another plan, the rules in Q&A J-2 and Q&A J-3 shall apply.

10.13 Failure to Locate.

If the Participant br Beneficiary to whom benefits are to be distributed cannot be located, and reasonable efforts have been made to find him, including the sending of notification by certified or registered mail to

his last known address, the Administrator may direct the Trustee to treat the benefits as a Forfeiture for the Plan Year in which the benefit is no longer immediately distributable (after the Participant attains the later of (i) Normal Retirement Age or (ii) age 62), provided, however, that if a benefit is forfeited pursuant to this Section 10.13, such benefit will be reinstated if a claim is made by the Participant or Beneficiary.

10.14 Premature Distributions.

Any distribution to a Participant shall be considered premature, and an additional income tax shall be imposed which is equal to ten percent of the amount which is includible in the Participant's gross income, unless the distribution is:

(a) made on or after the date on which the Participant attains age 59-1/2;

(b) made to a Beneficiary of the Participant after the Participant's death and pursuant to ARTICLE 8;

(c) made to the Participant due to his Disability;

(d) made in a series of substantially equal periodic payments (not less frequently than annually) for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and his Beneficiary after the Participant's Termination of Employment;

(e) made on or after the date on which the Participant attains age 55 and his subsequent Termination of Employment;

(f) made to the Participant in an amount not in excess of the amount allowable as a deduction for federal income tax purposes for amounts paid during the taxable year for medical care (determined without regard to whether the Participant itemizes deductions for such taxable year);

(g) made to an alternate payee pursuant to a qualified domestic relations order as defined in Section 414(p) of the Code; or

(h) qualified and is rolled over or transferred to an individual retirement account or qualified pension or profit-sharing plan pursuant to Section 402 or 408 of the Code, whichever is applicable.

ARTICLE 11

JOINT AND SURVIVOR ANNUITY REQUIREMENTS

11.01 Controlling Article.

The provisions of this ARTICLE shall apply to any Participant who is credited with at least one (1) Hour of Service on or after August 23, 1984, and such other Participants as provided in Section 11.07. Any annuity contract distributed herefrom must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or Spouse shall comply with the requirements of this Plan.

11.02 Qualified Joint and Survivor Annuity.

Unless an optional form of benefit is selected pursuant to a Qualified Election within the ninety (90) day period ending on the Annuity Starting Date, a married Participant's vested Account balances will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested Account balances will be paid in the form of a life annuity. The Participant may elect to have such annuity distributed upon attainment of the Earliest Retirement Age under the Plan.

11.03 Qualified Pre-Retirement Survivor Annuity.

Unless an optional form of benefit has been selected within the Election Period pursuant to a Qualified Election, if a Participant dies before the Annuity Starting Date then the Participant's vested Account balances will be applied toward the purchase of an annuity for the life of the surviving Spouse. The

surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. In lieu of the purchase of an annuity for the life of the surviving Spouse, the surviving Spouse may elect to have the benefits paid by one of the methods described in Section 10.06(c).

11.04 Definitions.

(a) Election Period: The period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant's Termination of Employment occurs prior to the first day of the Plan Year in which age 35 is attained, with respect to the Account balances as of the date of separation, the election period shall begin on the date of Termination.

Pre-age 35 waiver: A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Pre-Retirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant receives a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms as are comparable to the explanation required under Section 11.05(a). Qualified Pre-Retirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this ARTICLE.

(b) Earliest Retirement Age: The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(c) Qualified Election: A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity may be made. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity shall not be effective unless: (i) the Participant's Spouse consents in writing. to the election; (ii) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (iii) the Spouse's consent acknowledges the effect of the election; and (iv) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this subsection (c) (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit

consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 11.05.

(d) Qualified Joint and Survivor Annuity: An immediate annuity for the life of the Participant with a survivor annuity, for the life of the Spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's vested Account balances. The percentage of the survivor annuity under the Plan shall be 50% (unless a different percentage is elected by the Employer in Section 19 of the Adoption Agreement).

(e) Spouse (surviving Spouse): The Spouse or surviving Spouse of the Participant, provided that a former spouse will be treated as the Spouse or surviving Spouse and a current spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Code.

(f) Annuity Starting Date: The first day of the first period for which an amount is paid as an annuity or any other form.

(g) Vested Account balances: The aggregate value of the Participant's vested Account balances derived from

Employer and Employee Contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Section shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee Contributions (or both) at the time of death or distribution.

11.05 Notice Requirements.

(a) In the case of a Qualified Joint and Survivor Annuity as described in Section 11.02, the Administrator shall no less than 30 days and no more than 90 days prior to the Annuity Starting Date provide each Participant a written explanation of:

(i) the terms and conditions of a Qualified Joint and Survivor Annuity;

(ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit;

(iii) the rights of a Participant's Spouse; and

(iv) the right to make, and the effect of a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.

(b) In the case of a Qualified Pre-Retirement Survivor Annuity as described in Section 11.03, the Administrator shall provide each Participant, within the applicable period for such Participant a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting

the requirements of subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (ii) a reasonable period ending after the individual becomes a Participant; (iii) a reasonable period ending after Section 417(a)(5) of the Code ceases to apply to the Participant; (iv) a reasonable period ending after this Section 11.05 first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after Termination of Employment in the case of a Participant whose Termination of Employment occurred before attaining age 35.

For proposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of' a Participant's Termination of Employment before the Plan Year in which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to Termination and ending one year after Termination. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

(c) Notwithstanding the other requirements of this Section 11.05, the respective notices prescribed by this Section need not be given to a Participant if (i) the plan "fully subsidizes" the costs of a Qualified Joint and

Survivor Annuity or Qualified Pre-Retirement Survivor Annuity, and (ii) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity and does not allow a married Participant to designate a nonspouse Beneficiary. For purposes of this subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

11.06 Safe Harbor Rules.

(a) This Section shall apply to a Participant in a profit-sharing plan, and to any distribution, made on or after the first day of the first Plan Year beginning after December 31, 1988, from or under a separate Account attributable solely to accumulated Deductible Employee Contributions, and maintained on behalf of a Participant in a money purchase pension plan, (including a target benefit plan) if the following conditions are satisfied: (i) the Participant does not or cannot elect payments in the form of a life annuity; and (ii) on the death of a Participant, the Participant's vested Account balances will be paid to the Participant's surviving Spouse, but if there. is no surviving Spouse, or if the surviving Spouse has consented in a manner conforming to a Qualified Election, then to the Participant's designated Beneficiary. The surviving Spouse may elect to have distribution of the vested Account balances commence within the 90-day period following the date of the Participant's death. The Account balances shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions. This Section 11.06 shall not be operative

with respect to a Participant in a profit-sharing plan if the Plan is a direct or indirect transferee of a defined benefit plan, money purchase plan, a target benefit plan, stock bonus, or profit-sharing plan which is subject to the survivor annuity requirements of Sections 401(a)(11) and 417 of the Code. If this Section 11.06 is operative, then the provisions of this ARTICLE, other than Section 11.07, shall be inoperative.

(b) The Participant may waive the spousal death benefit described in this Section at any time provided that no such waiver shall be effective unless it satisfies the conditions of Section 11.04(c) (other than the notification requirement referred to therein) that would apply to the Participant's waiver of the Qualified Pre-Retirement Survivor Annuity.

(c) For purposes of this Section 11.06, vested Account balances shall mean in the case of a money purchase pension plan or a target benefit plan, the Participant's separate Account balances attributable solely to accumulated Deductible Contributions. In the case of a profit-sharing plan, vested Account balances shall have the same meaning as provided in Section 11.04(g).

11.07 Transitional Rules.

(a) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Sections of this ARTICLE must be given the opportunity to elect to have the prior Sections of this ARTICLE apply if such Participant is credited with at least one (1) Hour of Service under this Plan or the predecessor plan (if any) in a Plan Year beginning on or after January 1, 1976, and such Participant had at least ten (10) Years of Service at his Termination of Employment.

(b) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one (1) Hour of Service under this Plan or a predecessor plan (if any) on or after September 2, 1974, and who is not otherwise credited with any Service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his benefits paid in accordance with subsection (d).

(c) The respective opportunities to elect (as described in subsections (a) and (b)) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(d) Any Participant who has elected pursuant to subsection (b) and any Participant who does not elect under subsection (a) or who meets the requirements of subsection (a) except that such Participant does not have at least ten (10) Years of Service at his Termination of Employment, shall have his benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(i) Automatic joint and survivor annuity.If benefits in the form of a life annuity become payable to a married Participant who:

(1) begins to receive payments under the Plan on or after his Normal Retirement Age; or

(2) dies on or after Normal Retirement Age while still working for the Employer; or

(3) begins to receive payment on or after the Qualified Early Retirement Age; or

(4) at his Termination of Employment on or after attaining his Normal Retirement Age (or the Qualified Early Retirement Age) and after satisfying the eligibility requirements for the -payment of benefits under the Plan and thereafter dies before beginning to receive such benefits; then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the Election Period. The Election Period must begin at least six (6) months before the Participant attains Qualified Early Retirement Age and end not more than ninety (90) days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(ii) Election of early survivor annuity. A Participant who is employed after attaining the Qualified Early Retirement Age will be given the opportunity to elect, during the Election Period, to have a survivor annuity payable or death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the Spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his death. Any election under this provision will be in writing and may be changed by the Participant at any time. The Election Period begins on the later of (1) the 90th day before the Participant attains the Qualified Early Retirement Age, or (2) the date on which participation begins, and ends on the date of the Participant's Termination of Employment.

(iii) For purposes of subsection (d):

(1) Qualified Early Retirement Age is the latest of:

(A) the earliest" date under the Plan, on which the Participant may elect to receive retirement benefits,

(B) the first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or

(c) the date the Participant begins participation.

(2) Qualified Joint and Survivor Annuity is an annuity for the life of the Participant with a survivor annuity for the life of the Spouse as described in Section 11.04(d).

ARTICLE 12

LOANS

If permitted in Section la of the Adoption Agreement, the Employer, upon written application of a Participant in such manner and form as required by the Employer, may, in its sole discretion, authorize and direct the Trustee to make a loan from the Trust Fund to the Participant. All loans shall comply with the following terms and conditions:

(a) Loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis.

(b) Loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Employees.

(c) Loans must be adequately secured and bear a reasonable interest rate.

(d) No Participant loan shall exceed the amount of the Participant's vested Account balance.

(e) A Participant must obtain the consent of his or her Spouse, if any, to use of the Account balance as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 90-day period that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting Spouse or any subsequent Spouse with respect to that loan. A new consent shall be required if the Account balance is used for

renegotiation, extension, renewal, or other revision of the loan.. Notwithstanding the foregoing, this subsection (e) shall not apply in the case of a profit-sharing plan that meets the conditions described in Section 11.06.

(f) In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.

(g) No loans will be made to any shareholder-employee or Owner-Employee. 'For purposes of this requirement, a shareholder-employee means an employee or officer of an electing small business (Subchapter S) corporation who owns (or is considered as owning within the meaning of Section 318(a) (1) of the Code), on any day during the taxable year of such corporation, more than five-percent of the outstanding stock of the corporation.

If a valid spousal consent has been obtained in accordance with (e), then, notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving Spouse, then the Account balance shall be adjusted by first reducing the vested Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse.

No loan to any Participant or Beneficiary can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant or Beneficiary would exceed the lesser of (i) $50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (ii) one-half the present value of the nonforfeitable. accrued benefit of the Participant or, if greater, the total accrued benefit up to $10,000. For the purpose of the above limitation, all loans from all plans of the Employer and other Controlled Group Members are aggregated. Furthermore, any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant. An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this paragraph.

ARTICLE 13

TOP-HEAVY PLANS

If the Plan is or becomes Top-Heavy in any Plan Year beginning after December 31, 1983, the provisions of this ARTICLE 13 will supersede any conflicting provisions in the Plan or Adoption Agreement.

13.01 Definitions.

(a) Key Employee: Any Employee or former Employee (and the Beneficiaries of such Employee) who at any time during the determination period was (i) an officer of the Employer if such individual's Compensation exceeds fifty (50) percent of the dollar limitation under Section 415(b)(1)(A) of the Code, (ii) an owner (or considered an owner under Section 318 of the Code) of one of the ten largest interests in the Employer if such individual's Compensation exceeds the dollar limitation under Section 415(c)(1)(A) of the Code, (iii) a Five-Percent Owner, or (iv) a one-percent owner of the Employer who has Compensation of more than $150,000. For purposes of this subsection (a), Compensation means compensation as defined in Section 415(c)(3) of the Code, but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludible from the Employee's gross income under Section 125, 402(a)(8), 402(h) or 403(b) of the Code. The determination period is the Plan Year containing the Determination Date and the four (4) preceding Plan Years. The determination of who is a Key Employee will be made in accordance with Section 416(1)(1) of the Code and the regulations thereunder.

(b) Top-Heavy Plans: For any Plan Year beginning after December 31, 1983, this Plan is Too-Heavy if any of the following conditions exists:

(i) If the Top-Heavy Ratio for this Plan exceeds sixty (60) percent and this Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.

(ii) If this Plan is a part of a Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the group of plans exceeds sixty (60) percent.

(iii) If this Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty (60) percent.

(c) Too-Heavy Ratio:

(i) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plans which during the five (5) year period ending on the Determination Date (s) has or has had accrued benefits, the Top-Heavy Ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date(s) (including any part of any account balance distributed in the five (5) year period ending on the Determination Date(s)), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the five (5) year period ending on the Determination Date(s)), both computed in accordance

with Section 416 of the Code and the regulations thereunder. Both the numerator and denominator of the Top-Heavy Ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Section 416 of the Code and the regulations thereunder.

(ii) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the five (5) year period ending on the Determination Date(s) has or has had any accrued benefits, the Top-Heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the account balances under the aggregate defined contribution plan or plans for all Key Employees determined in accordance with (i), and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which Is the sum of the account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (i), and the present value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the Top-Heavy Ratio are increased for any distribution of an accrued benefit made in the five (5) year period ending on the Determination Date.

(iii) For purposes of (i) and (ii), the value of account balances and the present value of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve (12) month period ending on the Determination Date, except as provided in Section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant (1) who is not a Key Employee but who was a Key Employee in a prior year, or (2) who has not been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the five (5) year period ending on the Determination_ Date will be disregarded. The calculation of the Top-Heavy Ratio and the extent to which distributions, rollovers and transfers are taken into account will be made in accordance with Section 416 of the Code and the regulations thereunder. Deductible Contributions will not be taken into account for purposes of computing the Top-Heavy Ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

The accrued benefit of a Participant other than a Key Employee shall be determined under (A) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (B) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Section 411(b)(1)(C) of the Code.

(d) Permissive Aggregation Group: The Required Aggregation Group of plans plus any other plan or plans of the Employer which, when considered as a group with the Required Aggregation Group, would continue

to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(e) Required Aggregation Group: (i) Each qualified plan of the Employer in which at least one Key Employee participates, or participated at any time during the Determination Period (regardless of whether the Plan has terminated), and (ii) any other qualified plan of the Employer which enables a Plan described in (i) to meet the requirements of Section 401(a)(4) or 410 of the Code.

(f) Determination Date: For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year, the last day of that Plan Year.

(g) Valuation Date: The date elected by the Employer in Section 16 of the Adoption Agreement as of which account balances or accrued benefits are valued for purposes of calculating the Top-Heavy Ratio.

(h) Present Value: Present Value shall be based only on the interest and mortality rates specified in Section 16 of the Adoption Agreement.

(i) Super Top Heavy Plan: The Plan if it would be a Top Heavy Plan under Section 13.01(b) hereof if the words "ninety (90) percent" were substituted for the words "sixty (60) percent" in Section 13.01(b) hereof.

13.02 Minimum Allocation.

(a) Except as otherwise provided in subsections (b) and (c), the Employer Contributions and Forfeitures allocated on behalf of any Participant who is not a Key Employee shall not be

less than the lesser of three percent of such Participant's Compensation or in the case where the Employer has no defined benefit plan which designates this Plan to satisfy Section 401 of the Code, the largest percentage of Employer Contributions and Forfeitures, as a percentage of the first $200,000 of the Key Employee's Compensation, allocated on behalf of any Key Employee for that Plan Year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the Plan Year because of (i) the Participant's failure to complete 1,000 Hours of Service (or any equivalent provided in the Plan), or (ii) in the case of a CODA, the Participant's failure to have Elective Deferrals made to the Plan on his behalf, or (iii) Compensation less than a stated amount.

(b) For purposes of computing the minimum allocation, Compensation shall mean compensation as defined in Section 2.13. If the Plan is a non-standardized plan, Compensation is to be computed without reference to the exclusions otherwise permitted in Section 9 of the Adoption Agreement.

(c) The provision in subsection (a) shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

(d) The provision in subsection (a) shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided in Section 16 of the Adoption Agreement that the minimum

allocation or benefit requirement applicable, to Top-Heavy plans will be met in the other plan or plans.

(e) The minimum allocation required (to the extent required to be nonforfeitable under Section 416(b) of the Code) may not be forfeited under Section 411(a)(3)(B) or (D) of the Code. For each Plan Year in which the Paired Plans are Top-Heavy, the Employer will provide a minimum contribution equal to three (3) percent of total Compensation for each non-Key Employee who is entitled to a minimum contribution under Paired Plans #001 or #003.

13.03 Minimum Vesting Schedule.

For any Plan Year in which this Plan is Top-Heavy, one of the minimum vesting schedules as elected by the Employer in Section 16 bf the Adoption Agreement will automatically apply to the Plan. The minimum vesting schedule applies to all benefits within the meaning of Section 411(a)(7) of the Code except those attributable to Employee Contributions, including benefits accrued before the effective date of Section 416 of the Code and benefits accrued before the Plan became Top-Heavy. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as Top-Heavy changes for any Plan Year. However, this Section does not apply to the Account balances of any Employee who does not have an Hour of Service after the Plan has initially become Top-Heavy and such Employee's Account balance attributable to Employer Contributions and Forfeitures will be determined without regard to this Section 13.03.

13.04 Special Limitations on Top Heavy Allocations in Multiple Plans: "Code Section 415(e) Buy-Back".

If for any Plan Year the Plan is a Top Heavy Plan, and the Employer maintains or has ever maintained a qualified defined benefit pension plan, then in applying the limitations of Section 5.07 the words "100 percent" shall be substituted for the words "125 percent" in both the Defined Benefit Fraction and the Defined Contribution Fraction, as such terms are defined in Section 5.07, unless the Employer elects to "buy-back" the use of the "125 percent" limit with respect to any Plan Year in which the Plan is not Super Top Heavy by providing minimum benefits in excess of those otherwise required pursuant to the provisions of Section 13.02. An Employer accomplishes this "Code Section 415(e) Buy-Back" by electing to retain the use of the "125 percent" limit in Section 16(c)(i) of a non-standardized Adoption Agreement or Section 16(b)(i) of a standardized Adoption Agreement and by agreeing to provide the required increased minimum benefits according to one (1) of the following methods.

(a) If the Plan is a Paired Plan, then the minimum accrual provisions of Sections 14.03 shall apply automatically.

(b) If the Plan is not a Paired Plan, the Employer may nevertheless elect to provide the minimum accruals set out in Section 14.03 by electing in Section 16(c)(ii) of a non-standardized Adoption Agreement or Section 16(b)(ii) of a standardized Adoption Agreement to be subject to the Paired Plan provisions of ARTICLE 14.

(c) If the Plan is not a Paired Plan, the Employer may elect (by setting out overriding provisions in Section 16(c)(ii) of a non-standardized Adoption Agreement or Section 16(b)(ii) of a standardized Adoption

Agreement) to provide the minimum accruals required by Section 416(h)(2) of the Code by some method other than that set out in Section 14.03.

If the Plan is one (1) of multiple qualified plans maintained by the Employer and is not a Paired Plan, nor is to be considered to be a Paired Plan, and the Employer has not elected to utilize the Code Section 415(e) Buy-Back provisions, then the Employer shall provide (by setting out overriding provisions in Section 16(c)(ii) of a non-standardized Adoption Agreement or Section 16(b)(ii) of a standardized Adoption Agreement) minimum benefit accruals pursuant to Section 416(f) of the Code.

ARTICLE 14

PAIRED PLANS

14.01 Paired Plans.

The provisions of this ARTICLE shall apply if either:

(a) this Plan is a Paired Plan or,

(b) this Plan is not a Paired Plan, but is to be considered to be subject to the Paired Plan provisions of this ARTICLE under Section 16(c)(ii) of the Adoption Agreement.

Under this ARTICLE, Sections 14.03 and 14.04 shall apply with respect to Plan Years in which the Plan is considered as paired hereunder with a defined benefit pension plan maintained by the Employer, while Sections 14.05 and 14.06 shall apply with respect to Plan Years in which the Plan is paired, or considered as paired hereunder with another defined contribution plan maintained by the Employer, whether or not the Plan is also considered as paired hereunder, with a defined benefit pension plan.

With respect to such Paired Plans, the term "Compensation" shall have the meaning set forth in Section 415(c)(3) of the Code.

14.02 Multiple Benefits from Super Too Heavy Paired Plans.

In any Plan Year in which the Plan is considered to be a Paired Plan with a defined benefit pension plan, and the Plan is or becomes a Super Top Heavy Plan, as defined in Section 13.01(1), then the "Code Section

415(e) Buy-Back", as that term is defined in Section 13.04 hereof, shall not be available.

14.03 Minimum Defined Contribution Plan Allocations Under Top Heavy Paired Plans with Code Section 415(e) Buy-Back.

In any Plan Year in which the Plan is considered to be a Paired Plan (or has elected to be treated as a Paired Plan) with a qualified defined benefit pension plan, when the Plans are considered Top Heavy Plans, but are not Super Top Heavy Plans, and the Employer has elected to utilize the Code Section 415(e) Buy-Back, minimum nonintegrated allocations shall be made under this Section. Each Employee who participates in this Paired Plan and who also participates in the defined benefit pension plan considered to be a Paired Plan shall receive a minimum nonintegrated allocation of seven and one-half percent (7-1/2%) of Compensation under Section 13.02 of this Paired Plan instead of three percent (3%) of Compensation. Any Employee who is a Participant otherwise entitled to receive top heavy allocations from this Paired Plan., but who is not entitled to receive a minimum benefit from the defined benefit pension plan considered to be Paired Plan, shall receive a minimum nonintegrated allocation of four percent (4%) of Compensation under Section 13.02 of this Paired Plan instead of three percent (3%) of Compensation. Any Employee who is a Participant not entitled to receive top heavy allocations from this Paired Plan, but who is entitled to receive a minimum benefit from the defined benefit pension plan considered to be a Paired Plan, shall receive a minimum non-integrated accrued benefit of 3% of the highest five (5) consecutive year average compensation (not to exceed a cumulative accrued benefit of thirty percent (30%)).

14.04 Minimum Defined Contribution Plan Allocations Under Super Too Heavy Paired Plans or Without Code Section 415(e) Buy-Back.

In any Plan Year in which the Plan is considered to be a Paired Plan (or has elected to be treated as a Paired Plan) with a qualified defined benefit pension plan, if the Paired Plans are considered Super Top Heavy or if the Employer has elected not to utilize the Code Section 415(e) Buy-Back, then minimum nonintegrated allocations shall be made under this Section. Each Employee who is a Participant in this Paired Plan and who also participates in the defined benefit pension Paired Plan shall receive a minimum nonintegrated allocation of five percent (5%) of such Participant's Compensation. under Section 13.02 of this Paired Plan instead of three percent (3%) of Compensation. Any Employee who is a Participant otherwise entitled to receive top heavy allocations from this Paired Plan, but who does not participate in the defined benefit pension Paired Plan, shall receive a minimum nonintegrated allocation of three percent (3%) of Compensation under 13.02 of this Paired Plan.

The minimum nonintegrated allocations provided hereunder shall be made without reference to, or limitation by, any lesser Employer contribution having been allocated on behalf of any Key Employee in the Plan.

14.05 Defined Contribution Paired Plan Prevention of Duplication of Allocations.

In any Plan Year in which the Plan is a Paired Plan with a defined contribution plan, the Employer shall provide each Employee who is a Participant in this

Paired Plan and who participates in the other defined contribution Paired Plan the minimum nonintegrated allocation specified under this ARTICLE only in that Paired Plan indicated in Section 16(c)(iii) of the Adoption Agreement.

14.06 Forfeitures in Profit-Sharing Plans.

If this Plan is a profit-sharing Paired Plan, then the minimum nonintegrated allocations provided by this Plan under this ARTICLE shall include in their computation Forfeitures.

14.07 Integrated Paired Plans.

If the Paired Plans involve integration with Social Security, then only one (1) Paired Plan shall be integrated.

ARTICLE 15

PLAN ADMINISTRATION

15.01 Administrator.

The Employer shall be the Administrator of the Plan and shall have the sole power, duty and responsibility of directing the administration of the Plan in accordance with the provisions herein set forth. Except with respect to rights and powers expressly or impliedly reserved in the Sponsor to amend the Plan in order to maintain its status as a Plan qualified and approved under the Code, and to assist in its interpretation and administration, the Employer shall have the sole and absolute right and power to construe and interpret the provisions of the Plan and administer it for the best interest of its Employees including, but not limited to, the following powers and duties:

(a) to construe any ambiguity and interpret any provision of the Plan or supply any omission or reconcile any inconsistencies in such manner as it deems proper;

(b) to determine eligibility to become a Participant in the Plan in accordance with its terms;

(c) to decide all questions of eligibility for, and determine the amount, manner, and time of payment of any benefits hereunder, and to afford any person dissatisfied with such decision or determination, upon written notice thereof, the right to a full and fair hearing thereon;

(d) to establish uniform rules and procedures to be followed by Participants and Beneficiaries in filing

applications for benefits, in furnishing and verifying proofs necessary to determine age, and in any other matters required to administer the Plan;

(e) to adopt such reasonable accounting methods as it deems necessary or desirable, to receive and review the annual allocation report on the Plan and to bring up to date the balances of all Accounts;

(f) to receive and review reports of the financial condition and of the receipts and disbursements of the Trust Fund from the Trustee, and to determine and communicate to the Trustee the long-term and short-term financial goals of the Plan;

(g) to file such reports and statements, and to make such disclosures as required by law; and

(h) to furnish to Participants and Beneficiaries such information and statements, with respect to the Plan and their individual interests therein as required by law, and any additional information as deemed to be appropriate by the Employer.

All directions by the Employer shall be conclusive on all parties concerned; including the Trustee, and all decisions of the Employer as to the facts of any case and the meaning, intent, or proper construction of any provision of the Plan, or as to any rule or regulation in its application to any case shall be final and conclusive; provided, however, that all rules and decisions of the Employer shall be uniformly and consistently applied to all Employees in similar circumstances, and the Employer shall have no power to administratively add to, subtract from or modify any of the terms cf the Plan, or to change, add to or subtract from any benefits provided by the Plan, or to waive or fail to apply any

requirements of eligibility for participation or for benefits under the Plan.

15.02 Claims Procedure.

If, upon application for benefits made by a Participant or Beneficiary pursuant to Section 10.01(b), the Employer shall determine that benefits applied for shall be denied either in whole or in part, the following provisions shall govern:

(a) Notice of Denial. The Employer shall, upon its denial of a claim for benefits under the Plan, provide the applicant with written notice of such denial setting forth:

(i) the specific reason or reasons for the denial;

(ii) specific reference to pertinent Plan provisions upon which the denial is based;

(iii) a description of any additional material or information necessary for the claimant to perfect the claim, and

(iv) an explanation of the claimant's rights with respect to the claims review procedure as provided in subsection (b) of this Section.

(b) Claims Review. Every claimant with respect to whom a claim is denied shall, upon written notice of such denial, have the right to:

(i) request a review of the denial of benefits by written notice delivered to the Employer,

(ii) review pertinent documents, and

(iii) submit issues and comments in writing.

(c) Decision on Review. The Employer shall, upon receipt of a request for review submitted by the claimant in accordance with subsection (b), appoint a committee for the purpose of conducting such review, and provide the claimant with written notice of the decision reached by the said Committee setting forth the specific reasons for the decision and specific references to the provisions of the Plan upon which the decision is based. Such notice shall be delivered to the claimant not later than 60 days following the receipt of the claimant's request, or, in the event that the Employer shall determine that a hearing is needed no later than 120 days following the receipt of such request.

15.03 Records

All acts, determinations and correspondence with respect to the Plan shall be duly recorded and all such records, together with such other documents, including the Plan and all amendments thereto, if any, pertinent to the Plan or the administration thereof, shall be preserved in the custody of the Employer and shall at all reasonable times be made available to Participants and Beneficiaries for examination.

15.04 Delegation of Authority.

The administrative duties and responsibilities of the Employer as set forth in this ARTICLE may be delegated by the Employer in whatever manner it chooses, in whole or in part, to either a Plan Committee consisting of such persons as the Employer shall select or an Administrator. The Employer shall certify to the Trustee in writing as to the

membership and extent of authority of such Committee, or the identity and extent of authority of such Administrator, and any changes relative thereto as may occur from time to time. The authority of either the Committee or the Administrator shall be deemed to be that of the Employer to the extent so certified by the Employer. The Trustee shall be entitled to rely on the last such certification received and to continue to rely thereon until subsequent written certification to the contrary is received from the Employer. The Employer shall indemnify and save harmless either the members of the Committee, and each of them, or the Administrator from any liability arising from the effects and consequences of their acts, omissions and conduct in their official capacity with respect to the Plan and the administration thereof, except to the extent that such liability shall result from their own willful misconduct or gross negligence.

The Employer, or either the Plan Committee or the Administrator to which it has delegated its duties and responsibilities hereunder, may employ such competent agent or agents as it may deem appropriate or desirable to perform such ministerial duties or consultative or other services as the Employer or either its Committee or Administrator may in its discretion deem necessary to facilitate the efficient and proper administration of the Plan. The Employer and either its Committee or Administrator shall be entitled to rely upon all reports, advice and information furnished by such agent or agents, and all action taken or suffered by them in good faith in reliance thereon shall be conclusive upon all agents, Participants, Retired Participants, Beneficiaries and other persons interested in the Plan.

15.05 Correction of Errors.

If any change in records or error results in any Participant, Retired Participant or Beneficiary receiving from the Plan more or less than he would have been entitled to receive had the records been correct or had the error not been made, the Employer, upon discovery of such error, shall correct the error by adjusting, as far as is practicable, the payments in such a manner that the benefits to which such person was correctly entitled shall be paid.

15.06 Domestic Relations Orders.

(a) If the Trustee, the Employer, or the Committee receives a domestic relations order that purports to require the payment of a Participant's benefits to a person other than the Participant, the Committee shall take the following steps:

(i) If benefits are in pay status, the Committee shall direct the Trustee to account separately for the amounts that will he payable to the Alternate Payees (defined below) if the order is a Qualified Domestic Relations Order (defined below).

(ii) The Committee shall promptly notify the named Participant and any Alternate Payees of the receipt of the domestic relations order and of the Committee's procedures for determining if the order is a Qualified Domestic Relations Order.

(iii) The Committee shall determine whether the order is a Qualified Domestic Relations Order under the provisions of Section 414(p) of the Code.

(iv) The Committee shall notify the named Participant and any Alternate Payees of its determination as to whether the order meets the requirements of a qualified Domestic Relations Order.

(b) If, within 18 months beginning on the date the first payment would be made under the domestic relations order (the "18-Month Period"), the order is determined to be a Qualified Domestic Relations Order, the Committee shall direct the Trustee to pay the specified amounts to the persons entitled to receive the amounts pursuant to the order.

(c) If, within the 18-Month Period (i) the order is determined not to be a Qualified Domestic Relations order or (ii) the issue as to whether the order is a Qualified Domestic Relations Order has not been resolved, the Committee shall direct the Trustee to pay the amounts (and any interest thereon) to the Participant or other person who would have been entitled to such amounts if there had been no order.

(d) If an order is determined to be a Qualified Domestic Relations order after the end of the 18-Month Period, the determination shall be applied prospectively only.

(e) A Qualified Domestic Relation Order shall not require

(i) the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan, or

(ii) the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

(f) In the case of any payment before a Participant has terminated employment, a Qualified Domestic Relations Order shall not be treated as failing to meet the requirements of subparagraph (e)(i) above solely because such order requires that payment of benefits be made to an Alternate Payee:

(i) on or after the date on which the Participant attains (or would have attained) the earliest retirement date, or

(ii) as if the Participant had retired on the date on which such payment is to begin under such order (but taking into account only the value of the Participant's Account on such date).

For this purpose, "earliest retirement date" shall mean the earlier of: (1) the date on which the Participant is entitled to a distribution under the Plan, or (2) the later of the date-the Participant attains age fifty (50), or the earliest date on which the Participant could begin receiving benefits under the Plan if he terminated employment.

(g) To the extent provided in a Qualified Domestic Relations. Order, the former spouse of a Participant shall be treated as a Surviving Spouse for purposes of Sections 401(a)(11) and 417 of the Code.

(h) For the purposes of this Section, the following terms shall have the following definitions:

Alternate Payee - Any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right. to all or a portion of the benefits payable under the Plan to the Participant.

Qualified Domestic Relations Order - Any domestic relations order or judgment that meets the requirements set forth in Section 414(p) of the Code.

(i) In addition to the right to all or a portion of the benefits payable under the Plan to a Participant, an Alternate Payee shall have the same option of obtaining a loan from the Plan, pursuant to ARTICLE 12, or directing the investment of his Account, pursuant to Section 5.08, if such options are available to Participants.

ARTICLE 16

THE TRUST

16.01 The Trust.

The Employer which executed an Adoption Agreement and thus adopted the Plan, thereby established a Trust. By execution of the Adoption Agreement, the Trustee accepted the position of trustee thereof, and all the duties and responsibilities of that position. The Trust Fund shall consist of such. cash and other property as shall be paid or delivered from time to time by the Employer to the Trustee, together with the earnings and profits thereon. The Trust Fund shall be held, managed and administered by the Trustee in trust without distinction between principal and income in accordance with the provisions of this Plan, but shall be accounted for separately by the Trustee as to each Employer which adopts the Plan.

16.02 Contributions to Trustee.

Contributions shall be paid to the Trustee in accordance with the terms of the Plan. It shall be the duty of the Trustee to receive, hold, invest, reinvest and distribute the Trust Fund in accordance with the provisions of this Plan. The Trustee shall be under no duty to enforce payment of any contribution to the Trust Fund and shall not be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plan.

16.03 Investment Powers.

The Trustee, upon its own discretion with respect to Trust Fund investments, shall, except as otherwise restricted by law and the provisions hereof and except

as provided in Section 16.04, be authorized and empowered:

(a) to invest and reinvest the principal and income of the Trust Fund in any and all stocks, bonds, mutual funds, notes, debentures, mortgages, equipment trust certificates, insurance company contracts and in such other property, real or personal, investments and securities of any kind, class or character, including investments and qualifying securities or realty of the Employer, whether income-producing or not, units of any commingled, common pooled or mutual trust fund described in this Section, including securities issued by the Trustee (if the option under Section 5.08 is available to a Participant), savings accounts, certificates of deposit and time deposits of the Trustee or other institutions and securities as the Trustee may at some future date be authorized to make available to the Trust customer by the Securities and Exchange Commissioner within the guidelines, policies, procedures or approvals of the Comptroller of the Currency or the Federal Deposit Insurance Corporation; and in making such investments and reinvestments, the Trustee shall not be restricted to properties and securities authorized for investment by Trustees or other fiduciaries by the applicable statutory legal list of such properties and securities;

(b) to keep such portion of the Trust Fund in cash or cash balances as deemed to be in the best interest of the Trust;

(c) to sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction;

(d) to vote or to refrain from voting upon any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith, and generally to exercise any of the powers of any owner with respect to stocks, bonds, securities or other property held in the Fund;

(e) to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(f) to register any investment of the Trust Fund in its own name or in the name of a nominee or nominees and to hold any investment in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

(g) to employ suitable agents and counsel, and to pay their reasonable expenses and compensation;

(h) to borrow money from time to time for the purposes of the Trust on such terms and conditions as may be deemed to be advisable, and for any sum so borrowed to issue its promissory note as Trustee and to secure the repayment thereof by pledging all of any part of the Fund; and

(i) to make loans to Participants pursuant to ARTICLE 12 of the Plan and Section 14 of the Adoption Agreement.

Notwithstanding the foregoing, the Trustee is specifically authorized to invest the assets of the Trust Fund in any and all funds, whether or not presently in existence, which are, or shall be, maintained by the Trustee, including, without limiting the generality of the foregoing, mutual commingled, pooled or common Trust Funds, the terms and conditions of which are, and shall be on a continuing basis, hereby incorporated by reference as if fully set forth herein. Further provided, however, that notwithstanding any provision of the Plan to the contrary, no Trust Fund assets attributable to individual retirement accounts, if any, shall be invested in life insurance contracts, and no Trust Fund assets attributable to either individual retirement accounts or individually directed account amounts, if any, shall be invested in "collectibles" (as defined by Section 408(n) of the Code).

16.04 Appointment of Investment Manager.

The Employer, if it has so elected in Section 17(a) of the Adoption Agreement, may at any time and from time to time appoint in writing an Investment Manager or Managers to manage all or any portion of the assets of the Plan, and may revoke any such appointment previously made. For purposes hereof, the Employer shall mean only the entity executing the Adoption Agreement as "Employer," but shall not mean any organization executing the Plan as an "Adopting Employer." While such an appointment is in effect, the relations among the Administrator, Employer,

Investment Manager and Trustee shall be governed by the following provisions:

(a) The Employer shall certify to the Trustee the name or names of any Investment Manager appointed by it to manage the investment or reinvestment of all or any portion of the Trust Fund. Such certificate shall also state that the Investment Manager has acknowledged his fiduciary status with respect to the Plan in writing.

(b) The Trustee shall segregate any portion of the Trust Fund held by it which will be subject to the management of an Investment Manager into one or more separate accounts to be known as investment manager accounts and shall charge any expenses related to investments directed by an Investment Manager against such accounts. Each Investment Manager shall have the right and power to manage the investment and reinvestment of his investment manager account. The Trustee shall follow the directions of the Investment Manager with respect to the account of such Investment Manager and shall not be obligated to invest or otherwise manage any such investment manager account. All directions given by an Investment Manager to the Trustee shall be in writing, signed by an officer or a partner of the Investment Manager or by such other person or persons as may be designated by such officer or partner. Subject to such conditions as may be approved by the Employer and Trustee, the Investment Manager may place direct orders for the purchase or sale of securities or other property for its investment manager account, provided, however, that, in the case of an Investment Manager as defined in Section 2.35(a), the Trustee shall nevertheless retain custody of the assets comprising said account. In the case of an Investment Manager defined in Section

2.35(b), the Investment Manager may be permitted to retain custody of the assets comprising said account.

(c) If the Employer, by written notice to the Trustee, terminates the authority of an Investment Manager but does not appoint a successor to manage the investment and reinvestment of the account of such Investment Manager, the portion of the fund then held in such investment manager account shall return to the unsegregated portion of the Trust Fund and the Trustee shall have authority to manage the investment and reinvestment of such account. Until receipt of a written notice terminating the authority of an Investment Manager, the Trustee shall be fully protected in relying upon the latest prior written notice of appointment of an Investment Manager.

(d) Any Investment Manager may, in writing, authorize the Trustee to invest any portion of his investment manager account in short-term investments. The Trustee, in its sole discretion, may make such investments either directly or by investment collectively with other assets, including but not limited-to investment in any common, commingled, mutual or pooled trust fund established and maintained by the Trustee for the investment of funds administered in a fiduciary capacity.

(e) The Trustee shall not be responsible for any loss caused by its acting upon any notice, direction or certification of any Investment Manager appointed by the Employer which the Trustee reasonably believes to be genuine. The Trustee shall have no duty to question any direction, action or inaction of any Investment Manager taken as provided in this Section 16.04. The Trustee shall have no duty to review the securities or other property held in any investment manager account

or to make any suggestions to any Investment Manager or to the Employer with respect to the investment, reinvestment, or disposition of investments in any investment manager account. The Trustee shall not be responsible for the results arising from the Trustee's compliance with the instructions of any Investment Manager.

(f) The Trustee shall not be responsible for determining the reasonableness of any compensation paid to or agreed to be paid to an Investment Manager. Any such compensation to an Investment Manager shall be paid from the Trust Fund, if the Administrator so directs.

16.05 Employer-Directed Investments.

Notwithstanding any other provision of this Plan except Section 5.'08, the Employer shall have the right to direct in writing the Trustee from time to time to invest the assets of the Fund in such securities or other investments as the Employer shall specify in its direction, which may include, but shall not be limited to, specifying the percentage of assets to be invested in and among the trust funds authorized for investment under Section 16.03 hereof. Such direction shall be made in such form and manner as shall be required by the Trustee of the individual or individuals duly authorized by the Employer.

Directed investments shall be made by the Trustee as soon as reasonably possible after actual receipt of such direction; provided, however, the Trustee shall not be liable for losses due to reasonable delay in the execution of such directions. Notwithstanding the foregoing, in no event shall a directed investment be permitted in such an investment that the Trustee, in its sole discretion, deems itself unable to administer

efficiently, properly and conveniently with respect thereto; provided, however, that the Trustee's acceptance of the administration of a directed investment shall not be unreasonably withheld. The Trustee shall be under no duty to question any such direction of an Employer with respect to investments, nor shall the Trustee be required to review any securities or other property held pursuant to written notice. The Trustee shall not have any liability whatsoever for any losses which may result from either the Employer's direction or any investment decision made pursuant to this Section, or for any loss which may result by reason of the failure of the Employer to make such directions. Nor shall the Trustee have any liability or responsibility whatsoever for any disparity between the performance or rates of investment return of Employer-directed investments and the Trust Fund in general.

16.06 Insurance Contracts.

The Trustee may either invest in life insurance contracts or may purchase from the life insurance company specified by the Employer non-transferable annuity contracts if deemed appropriate and directed by the Employer either to carry out properly or to safeguard the obligations under the Plan.

16.07 Custodial Role.

Notwithstanding any other provisions in this Plan, if the Trustee is a bank and the bank does not have trust powers under State and/or Federal banking laws and regulations, but otherwise qualifies as a Bank under Section 581 of the Code, then the Trustee will assume the role as a custodian under this Plan, and all investments shall be handled in accordance with Section

16.04 and/or Section 5.08, if selected. Furthermore, a bank or trust company having trust powers shall act as custodian where Participant or Employer-directed investments are made under Sections 16.04 and 5.08. The Trustee's responsibilities will be as provided in Sections 16.04 and 5.08.

16.08 Liability of Trustee.

The Trustee shall not be liable for its failure to carry out the terms of this Agreement, or any instruction or direction of the Employer (or its agent), or a Participant, when issued in accordance with this Plan, or for relying upon advice given by any competent counsel or other. agent employed by the Trustee or Employer, or for the making, retention or sale of any investment or reinvestment, or for any loss to or diminution of the Trust Fund, except due to its own negligence, willful misconduct, lack of good faith or conduct otherwise constituting a breach of fiduciary duty.

16.09 Court Actions.

As a prerequisite to taking any action hereunder, the Trustee shall neither be required to receive either any order to consent of any court, nor shall the Trustee be required to file any court return or to report to any court.

16.10 Prudent Man Rule.

In discharging its duties, the Trustee shall act with the skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims:

(a) by diversifying the investments of the Trust, to the extent the Trustee has the discretionary authority and responsibility for such investments, so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent. not to do so; and

(b) in accordance with the documents and instruments governing the Plan, insofar as such documents and instruments are consistent with the provisions of ERISA.

16.11 Prohibited Transactions.

Any other provisions of the Plan and Trust Agreement to the contrary notwithstanding, neither the Employer, the Trustee nor any Disqualified Person as defined in Section 4975(d) of the Code may engage, directly or indirectly, in any of the acts or transactions under Section 4975(c) of the Code and Section 406 of ERISA for which no exemption is provided by Section 4975(d) of the Code or Section 408 of ERISA.

16.12 Conflict of Interest.

The Trustee, except as expressly permitted in Section 16.03(a), shall not:

(a) deal with the assets of the Plan in its own interest or for its own account;

(b) in its individual or in any other capacity, act in any transaction involving the Plan (or on behalf of a party or representing a party) where interests are adverse to the interest of the Plan or the interest of its Participants or Beneficiaries; or

(c) receive any consideration for its own account from any party dealing with the Plan in connection with a transaction involving the assets of the Plan.

Provided, however, that nothing in this Section shall be construed to preclude the Trustee from receiving reasonable compensation for services rendered, or for reimbursement of expenses properly and actually incurred in the performance of its duties under the Plan.

16.13 Exemptions.

Nothing in this ARTICLE shall be construed to preclude a transaction which is otherwise prohibited hereunder or under the Act, provided that the Trustee, or any other interested party or parties, shall first apply to, and secure from the Secretary of Labor, an exemption with respect to such transaction.

16.14 Insurance.

The Trustee may purchase insurance to insure itself, the Trust Fund, or other fiduciary against liability or losses occurring by reason of an act or omission of any fiduciary, provided that such insurance shall permit recourse by the insurer against the fiduciary in the case of a breach of fiduciary duty.

16.15 Accounts.

The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any person designated

by the Employer. The Trust Fund may, at the Trustee's discretion, be administered on a unit accounting basis and the value of a unit on the date of adoption or amendment of the Plan shall be as determined by the Trustee.

16.16 Reports.

Annually, or more frequently if determined by either the Employer or the Trustee, or as shall be required by law, the Trustee shall cause a valuation to be made of the Trust Fund at its fair market value. Within 120 days after the end of the Plan Year _(or on such other date as may be prescribed under regulations of the Secretary of Labor) and at the time of each valuation during the Plan Year, the Trustee shall file with the Employer and certify the accuracy of a written statement setting forth, for the valuation period, all investments, receipts, disbursements, and such other information as the Trustee maintains which the Employer may require from time to time in order to fulfill its obligations under applicable law. Upon expiration of 90 days from the date of filing of the statement as provided herein, the Trustee's liability for any inaccuracies or omissions appearing upon the face of such statement shall cease, except as otherwise may be provided by law, and except with respect to any inaccuracies or omissions as to which the Employer shall file with the Trustee written objection before the expiration of such 90-day period.

To the extent consistent with applicable law, each transaction, whether an increase or a decrease to the Trust Fund, may be expressed in terms of a number of units computed on the basis of the unit value determined on the preceding valuation date. In the event that transactions are reported in this manner, the Trustee shall state, in addition to such other information

as is required by law, the number of units in the Trust Fund and the value of a unit on the date of the statement.

16.17 Payments.

The Trustee shall make payment from the Trust Fund to such persons, in such manner and in such amounts as the Employer may direct in writing from time to time. The Trustee shall be fully protected in acting upon any such written direction without inquiry or investigation, and shall have no duty or authority to determine the rights or benefits of any Participant or Beneficiary under the Plan, or to inquire into the right or power of the Employer to direct any payment from the Fund.

16.18 Direction of Committee.

The Trustee shall be fully protected in relying upon the written certification of the Employer as to the membership and extent of authority of any committee duly authorized to act on its behalf and in continuing to rely thereon until subsequent certification has been delivered to the Trustee. The Trustee shall be fully protected in relying and acting upon any written direction of such committee whose membership and authority has been certified to the Trustee, and in continuing to so act and rely until subsequent certification that said authority has been revoked or modified has been delivered to the Trustee.

16.19 Impossibility of Performance.

In case it becomes impossible for either the Employer or the Trustee to perform any act under the Plan, that act shall be performed which in the judgment of the Trustee will most nearly carry out the intent and

purpose of the Plan. All parties to this Plan or all parties in any way interested in the Plan shall be bound by any acts performed under such conditions.

16.20 Expenses.

The expenses incurred by the Employer in the installation, administration and amendment of the Plan shall be paid from the Trust Fund, unless paid directly by the Employer. Such compensation to the Trustee as may be set forth in its published fee schedule or as from time to time agreed upon in writing from time to time between the Employer and the Trustee and the expenses incurred by the Trustee in the performance of its duties, including professional fees of any person, firm or agent employed by the Trustee to carry out the investment, management or administrative functions hereunder, and all other proper charges and disbursements of the Trustee, shall be paid from the Trust Fund, unless paid directly by the Employer.

16.21 Taxes.

The Trustee shall pay out of the Trust Fund taxes of any and all kinds including, without limiting the generality of the foregoing, property taxes and income taxes levied or assessed under existing or future laws upon or with respect to the Trust, or any monies, securities or other property forming a part thereof, or the income therefrom, subject to the terms of any agreements or contracts made with respect to trust investments which make other provisions for such tax payments. The-Trustee may assume that any taxes assessed on or with respect to the Trust or its income are lawfully assessed unless the Employer shall in writing advise the Trustee that in the opinion of counsel for the Employer, such taxes are or may be

unlawfully assessed. In the event that the Employer shall so advise the Trustee, the Trustee shall, if so requested in writing by the Employer, contest the validity of such taxes in any manner deemed appropriate by the Employer or its counsel for the refund, abatement, reduction or elimination of any such taxes.

16.22 Resignation or Removal of Trustee.

The Trustee may resign at any time upon 90 days' written notice to the Employer. The Trustee may be removed by the Employer, or the Employer may increase or decrease the number of Trustees, at any time upon 90 days' written notice delivered to the Trustee. In the event of such removal or resignation, the Employer shall designate a Successor Trustee or other medium of funding under an agreement executed for such purpose. If the Employer does not so designate such Successor Trustee or medium of funding within 60 days, the Trustee may apply to a court of competent jurisdiction for the purpose of securing the designation of same. Upon the expiration of 90 days from resignation or removal of the Trustee, the Trustee's liability for any inaccuracies or omissions shall cease, except as otherwise may be provided by law, and except with respect to any inaccuracies or omissions as to which the Employer shall file with the Trustee written objection before the expiration of such 90-day period.

16.23 Transfer of Assets to a Successor Trustee or Other Medium of Funding.

In the event the Employer wishes to continue the Plan through a Successor Trustee or through another medium of funding, it may, upon 90 days' written notice and upon furnishing evidence. of the continuation of the

Plan through a Successor Trustee or medium of funding, direct the Trustee to transfer the assets of the Trust Fund to such Successor Trustee or medium of funding, in which event the Trustee shall deliver in cash or in kind the assets of the Trust Fund (less expenses), including such instruments of conveyance and further assurance as may be reasonably required for vesting in such Successor Trustee or other medium of funding all right, title and interest of the Trustee in assets of the Trust Fund attributable to the Employer. The transfer of assets under the circumstances above shall not, within itself, be deemed a termination of the Plan, or a cessation of Employer Contributions to the Plan. Upon completion of such transfer of assets, the terms and provisions of the Plan and of this Agreement shall no longer control with respect to the Employer or the Plan (or its successor) as it may be continued by the Employer.

16.24 Assets of Controlled Group Members.

A Controlled Group Member with the written approval of the other Controlled Group Members may direct the Trustee to commingle the Trust Fund assets of its Plan with those of the assets of other Controlled Group Members held by the Trustee: in a mutual, commingled, pooled or common Trust Fund; provided, however, that adequate records shall be maintained at all times so that it is possible to ascertain and separate the Trust: Fund assets of each Controlled Group Member.

ARTICLE 17

AMENDMENT OR TERMINATION

17.01 Employer's Right to Amend Plan.

(a) The Sponsor may amend any part of the Plan. For purposes of Sponsor amendments, the mass submitter shall be recognized as the agent of the Sponsor. If the Sponsor does not adopt the amendments made by the mass submitter, it will no longer be identical to or a minor modifier of the mass submitter plan.

(b) The Employer may (i) change the choice of options in the Adoption Agreement, (ii) add overriding language in the Adoption Agreement when such language is necessary to satisfy Section 415 or 416 of the Code because of the required aggregation of multiple plans, and (iii) add certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the Plan to be treated as individually designed. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Section 412(d) of the Code, will no longer participate in this master or prototype Plan and will be considered to have an individually designed plan.

(c) If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, each Participant with at least three (3) Years of Service with the Employer may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage

computed under the Plan without regard to such amendment or change. For Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "five (5) Years of Service" for "three (3) Years of Service" where such language appears.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

(i) sixty (60) days after the amendment is adopted;

(ii) sixty (60) days after the amendment becomes effective; or

(iii) sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Administrator.

(d) No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under Section 412(c)(8) of the Code. For purposes of this subsection, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to Service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such

date) of such Employee's Employer-derived Accrued Benefit will not be less than the percentage computed under the Plan without regard to such amendment.

17.02 Sponsor's Right to Amend Plan.

The Employer, by its act of adopting the Plan, expressly delegates to the Sponsor the power and authority to amend this Master Plan, in whole or in part, at such time or times and in such manner as the Sponsor shall deem necessary or desirable. The Sponsor shall promptly notify in writing the Employer of any such amendment, and upon receipt of such notification the Employer shall be bound thereby.

17.03 Limitation of Right to Amend.

No amendment shall have the effect of causing or permitting any part of the Trust Fund to be used for or diverted to, purposes other than for the exclusive benefit of Participants, Retired Participants and Beneficiaries, and no amendment shall have the effect of revesting in the Employer any portion of the Trust Fund.

17.04 Termination of Plan by Employer.

(a) Right Reserved. Although the Employer expects the Plan to be continued indefinitely, it reserves the right to terminate the Plan at any time by action by the Board and to discontinue all contributions hereunder in the case of a profit-sharing plan. If the Plan is a profit-sharing plan, the Employer reserves the right to temporarily suspend contributions from time to time as it shall deem appropriate and necessary, and such suspension of contributions shall not be considered to be a termination of the Plan. In the event of

termination or partial termination of the Plan, or a complete discontinuance of contributions to the Plan, the Employer shall notify the Trustee in writing of such termination and, prior to any distribution of assets hereunder, shall file notice, in such form and manner as is required by law, with the Internal Revenue Service.

(b) Distribution upon Termination. In the event of the termination or partial termination of the Plan, the Account balances of each affected Participant shall be nonforfeitable. In the event of a complete discontinuance of contributions under a profit-sharing plan, the Account balances of each affected Participant will be nonforfeitable. The Employer, by written notice of termination of the Plan, shall direct the Trustee to reduce such assets of the Trust Fund to cash which are not designated by the Employer, or, in the case of a Participant Directed Investment Account, as provided in Section 5.08, by the Participant, to be retained for distribution in kind. The Trustee shall cause a valuation of the Trust Fund to be made as of the date such assets are reduced to cash, at which time the balances of Accounts shall be brought up to date in accordance with Section 5.05. Upon completion of such accounting and receipt from the Employer of directions as to the form of distributions, the Trustee shall distribute the assets of the Trust Fund to the Participants or Beneficiaries, as the case may be, in accordance with such directions. Each Participant or Beneficiary who is entitled to receive a distribution may elect an option in accordance with Section 10.06(c) or (d), whichever applies. The manner in which the funds are applied in the case of a termination shall be subject to the requirements of ARTICLE 11.

17.05 Sponsor's Withdrawal of Participation in Master Plan.

The Sponsor may withdraw its participation as a Sponsor of this Plan as a Master Plan. The Sponsor shall notify each Employer who has adopted the Plan that the Sponsor has withdrawn its participation. Such an Employer will be deemed to have an individually-designed plan at that point.

17.06 Failure of qualification.

If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this Master/Prototype Plan and will be considered an individually designed Plan. If the Employer's Plan fails to attain or retain qualification, the funds of such plan will be removed from this Master Trust as soon as administratively feasible.

17.07 Mergers.

In the event of any merger or consolidation with, or transfer of assets to any other plan, each Participant will receive a benefit immediately after such merger, consolidation or transfer (if the Plan then terminated) which is at least equal to the benefit the Participant was entitled to immediately before such merger, consolidation. or transfer (if the Plan had then terminated).

ARTICLE 18

MISCELLANEOUS

18.01 Liability of Employer.

No Employee, Participant, Retired Participant or Beneficiary shall have any right or claim to any benefit under the Plan except in accordance with its provisions. The adoption of the Plan shall neither be construed as creating any contract of employment between the Employer and any Employee or otherwise conferring upon any Employee or other person any legal right to continuation of employment, nor as limiting or qualifying the right of the Employer to discharge any Employee without regard to the effect that such discharge might have upon his rights under the Plan.

18.02 Spendthrift Clause.

Except for Plan loans to Participants as permitted by ARTICLE 12 and the assignments provided therefore, no benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code, or any domestic relations order entered before January 1, 1985.

18.03 Successor Business of Employer.

Unless this Plan is sooner terminated, any incorporated successor to the business of the Employer may continue the Plan and such successor shall thereupon succeed to all the rights, powers and duties of the Employer hereunder. The employment of any Employee who has continued in the employ of such successor shall not be deemed to have been terminated or severed for any purpose hereunder.

In the event that the Employer is reorganized or dissolved for any reason without any provision being made for the continuance of this Plan by a successor to the business of the Employer, the Plan shall terminate and the assets shall be. distributed as provided in Section 17.04(b) hereof.

18.04 Qualification by the Internal Revenue Service.

This Plan is adopted by the Employer with the intent that it shall qualify, as provided in Sections 401(a) and 501(a) of the Code. Therefore, notwithstanding any provision of the Plan to the contrary, the Employer reserves the right, in the event of the failure of the Plan to qualify initially, as evidenced by receipt of a letter from the Internal Revenue Service that the Plan does not qualify, at its option to do either of the following:

(a) to withdraw and terminate the Plan and Trust hereunder, in which event no Participant or Beneficiary shall, except with respect to a refund of his Employee Account, have any right or claim hereunder or to any benefit from the Plan without regard to the provisions of ARTICLE 17 hereof, whereupon all contributions shall be returned to the

Employer, and the Trustee shall be discharged from all obligations hereunder; or

(b) to amend the Plan in whole or in part, retroactively or otherwise, as is necessary or advisable so that the Plan shall qualify and continue to qualify.

18.05 Use Limited to Qualified Trusts.

This Master Plan shall be made available by the Sponsor only to Plans established hereunder which shall meet, and continue to meet, the requirements of Sections 401(a) and 501(a) of the Code. Should this Master Plan be disqualified as to any adopting Employer, the funds held in Trust on behalf of said adopting Employer shall be segregated and appropriate disposition made thereof within a reasonable time after notice of such adverse determination of disqualification by the Internal Revenue Service.

18.06 Conflict of Provisions.

If any provision or term of this Plan, or of the Trust Agreement entered into pursuant hereto, is deemed to be at variance with, or contrary to, any law of the United States or applicable state law, said provision shall be severable to the extent it does not disqualify the Plan under Sections 401(a) and 501(a) of the Code and the provision of the law shall be deemed to govern.

18.07 Definition of Words.

Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be

substituted for the singular, in any place or places herein where the context may require such substitution or substitutions.

18.08 Titles.

The titles of ARTICLES and Sections are included only for convenience and shall not be construed as a part of the Plan or in any respect to affect or modify its provisions.

EXHIBIT B

Department of the Treasury
Washington. DC 20224
Person to Contacts: Ms. Arrington
Telephone Number: (202) 566-4576
Refer Reply to: E:EP:Q:ICU
Date: 05/10/90

GENERAL TRUST CO
104 WOODMONT SUITE 190
NASHVILLE, TO 37205

Dear applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter to each employer who adopts this plan. You are also required to send a copy of the approved form of the plan, any approved amendments and related documents to each key District Director of Internal Revenue Service in whose jurisdiction there are adopting employers.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). An employer who adopts this plan will be considered to have a plan qualified under Code

section 401(a) provided all the terms of the plan are followed, and the eligibility requirements and contribution or benefit provisions are not more favorable for officers owners or highly compensated employees than for other employees. Except as stated below, the Key District Director will not issue a determination letter with regard to this plan.

Our opinion does not apply to the form of the plan for purposes of Code section 401(a)(16) if: (1) an employer ever maintained another qualified plan for one or more employees who are covered by this plan, other than a specified carried plan within the meaning of section 7 of Rev. Proc. 39-9, 1989-6 I.R.S. 14: or (2) after December 31, 1985, the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3). In such situations the employer should request a determination as to whether the plan considered with all related qualified plans and, if appropriate welfare benefit funds, satisfies the requirements of Code section 40l(a)(16) as to limitations on benefits and contributions in Code section 415.

If you, the plan sponsor, have any questions concerning the IRS processing of this case please call the above telephone number. This number is only for use of the plan sponsor. Individual participants and/or adopting employers with questions concerning the plan should contact the plan sponsor. The plan's adoption agreement must include the sponsor's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this Letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely yours,
Chief, Employee Plans Qualifications Branch

EXHIBIT C

PROMISSORY NOTE

State of Tennessee

County of Hamblen

Raymond B. Yates	$20,000.00
Participant	Amount of Note
P.O. Box 1067	
Morristown, TN 37816	12-13-89
Address	Date of Note

FOR VALUE RECEIVED, the undersigned (the Maker) promises to pay to the order of the Trustees of the Raymond B. Yates MD Work Purchase Pension Plan, the sum of 20,000.00 twenty thousand DOLLARS ($20,000.00), plus interest at the rate of 11%, said principle and interest thereon to be paid in the following manner:

Any holder hereof may declare all amounts due hereunder to immediately due and payable whenever the holder deems itself insecure or upon the default in any payment hereunder, or upon the Maker's failure to comply with the terms hereof, or upon the Maker's insolvency, bankruptcy, death or incompetency. After maturity, this, note will bear interest at the highest legal rate. The Maker (1) promises to pay all cost of collection, trial, appeal or otherwise; and (2) waives presentment, demand, notice or hishonor and protest.

This loan is secured by the Maker's Irrevocable Pledge and Assignment of the Maker's vested

interest in the, a copy of which is provided with this note. The security interest created by the security agreement, if any, extends to all other and future obligations of the Maker.

If the interest rate shown on the fact of this note shall exceed the rate permitted by law, the rate will be reduced by the amount necessary to comply with the law. Any sum previously collected in excess of the legal limit will be used to reduce the principal amount due or refunded to the borrower.

Each borrower shall be jointly and severally liable and each borrower, co-borrower and guarantor of this note consents to renewals, replacements and extension of time for payment hereof before, at or after maturity, consents to the acceptance of security or substituted security for this note and waives demand and protest and the right to assert any statute of limitations.

Dated this 13th day of December, 1989.

Raymond B. Yates
MAKER

WITNESS

IRREVOCABLE PLEDGE AND ASSIGNEMENT

In consideration of a loan to me of $ 20,000.00, by the Trustees of the Raymond B. Yates MD PC Work Purchase Pension Plan (the Plan), as evidenced by a copy of the Promissory Note attached to this pledge, I hereby irrevocably pledge and assign to the Trustees of the Plan, or their successor or successors, the Vested Employer Account Balance, at any time existing under the Plan, necessary to satisfy the loan which is the subject of his pledge, any unpaid interest on such loan, all attorneys' fees necessary for collection of this obligation and all costs of collection. Failure by me to repay this loan when due or to pay any installment or interest when due shall authorize the Trustees to foreclose on any property or to bring a lawsuit to collect the outstanding indebtedness and interest on the indebtedness.

Should my employment terminate with Raymond B. Yates MD PC for any reason while this obligation is unpaid and under circumstances in which the Trustees would ordinarily make a distribution from the Plan to me. The amount otherwise distributable to me or to my named beneficiary, will be reduced by this outstanding indebtedness, together with any accrued interest due on the indebtedness.

This Irrevocable Pledge and Assignment shall bind my heirs, personal representatives or other legal representatives.

Dated this 13th day of December

Raymond B. Yates
Participant

N/A
Spouse of Participant

Raymond B. Yates
Administrator
OR
Notary Public

PARTICIPANT LOAN APPLICATION

I, Raymond B. Yates hereby request a loan from the Raymond B. Yates Work Purchase Retirement Plan in the amount of $20,000.00. Please set up the loan for a repayment period of 5 years.

I understand that the maximum amount that I may borrow from the retirement plan is equal to one-half my vested account balance. I also understand that should my employment terminate for may reason while there is an unpaid balance on the loan and the trustees make a distribution from the plan to me or my beneficiary, that the trustees will reduce the amount of my distribution by the outstanding balance of the loan plus any accrued interest due on the loan. I further understand the adverse tax consequences of such a distribution: although I will receive in cash the reduced amount, the full amount vested of my account balance will be reported to the IRS as a taxable distribution.

Raymond B. Yates

RAYMOND B. YATES, M.D., P.C.
PROFIT SHARING PLAN
EMPLOYEE STATUS REPORT
PERIOD 07/01/89 TO 06/30/90

265a

	# Participants	Compensation A
Active	2	152,496.42
Total	2	152,496.42

Name	***** Vesting			***** Term. Vesting		
	100%	Partial	Zero	100%	Partial	Zero
Employer	2	0	0	0	0	0

RAYMOND B. YATES, M.D., P.C.
PROFIT SHARING PLAN
EMPLOYEE STATUS REPORT
PERIOD 07/01/89 TO 06/30/90

264a

Part.	Comp	S	AA	RA	Birth Date	Empl Date	Norm Retr Dt	Plan Entry Dt	Stat	Vest Pos	Vest Yrs	Sev Yrs	Pt. Yrs
†	*	F	42	65	12/9/47	9/1/81	7/1/12	1/1/83	Act.	09	09	09	07
††	**	M	49	65	1/18/41	9/1/81	7/1/06	1/1/83	Act.	09	09	09	07

† Marilyn Bacon 412-80-0545 * $6,940.13
†† Raymond B. Yates M.D. 435-54-3504 ** $145,556.29

267a

Part.	Comp	S	AA	RA	Birth Date	Empl Date	Norm Retr Dt	Plan Entry Dt	Stat	Vest Pos	Vest Yrs	Sev Yrs	Pt. Yrs
†	*	F	24	65	10/3/67	5/11/92	11/1/32	7/1/93	Inel.	00	00	00	00
††	**	F	0	65	0/0/0	0/0/0	0/0/0	0/0/0	Inel.	00	00	00	00
†††	***	F	0	65	0/0/0	0/0/0	0/0/0	0/0/0	Inel.	00	00	00	00
††††	****	M	49	65	1/18/41	9/1/81	7/1/06	1/1/83	Act.	09	09	09	07

† Lisa Gentry 413-49-3928
†† Lorraine Yates 437-39-5273
††† Monica Yates 000-00-0000
†††† Raymond Yates M.D. 435-54-3504

* $1,987.50
** $1,750.00
*** $650.00
**** $135,365.00

266a

4/4/1991
PLAN # 10098

RAYMOND B. YATES, M.D., P.C.
PROFIT SHARING PLAN
EMPLOYEE STATUS REPORT
PERIOD 07/01/89 TO 06/30/90

PAGE 1
SEQUENCE # 0000

Part.	Comp	S	AA	RA	Birth Date	Empl Date	Norm Retr Dt	Plan Entry Dt	Stat	Vest Pos	Vest Yrs	Sev Yrs	Pt. Yrs
†	*	F	21	65	6/25/71	12/31/91	7/1/36	1/1/93	Tem Non Part	00	00	00	00
††	**	F	42	65	12/9/47	9/1/81	7/1/12	1/1/83	Act.	11	11	11	09

† Kristin Arrlington 415-49-4441
†† Marilyn Bacon 412-80-0545

* $2,561.91
** $8,609.40

Case No. 96-34511

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE,
NORTHERN DIVISION,
AT KNOXVILLE

Adversary Pro. No. 98-3088
Chapter 7

IN RE
RAYMOND B. YATES,
Debtor;

WILLIAM T. HENDON, TRUSTEE
Plaintiff,

VS.

RAYMOND B. YATES, M.D.,
P.C. PROFIT SHARING PLAN
and RAYMOND B. YATES, PLAN TRUSTEE,
Defendants.

STIPULATION OF FACTS

The parties, by and through each of their counsel, hereby submit this Stipulation of Facts regarding; the Motions for Summary Judgment filed by the Plaintiff and the Defendants in this matter. The parties stipulate to the following facts:

1. On December 13, 1989, a loan in the amount of $20,000 was taken from the Raymond B. Yates, M.D., P.C. Money Purchase Pension Plan ("Money Purchase Plan") by Raymond Yates as a participant of such Money Purchase Plan. The terms of such loan

provided for a five (5) year repayment period with monthly payments of $433.85. The annual interest rate was 11%. The loan was transferred to the Raymond B. Yates, M.D., P.C. Profit Sharing Plan ("Profit Sharing Plan") on June 12, 1992. The loan was renewed for a five (5) year period at the time of transfer. This was the only outstanding loan of Dr. Yates owed to the Profit Sharing Plan as of November 1996.

2. The $50,467.46 payment to the Profit Sharing Plan in November 1996 was a repayment of the $20,000 loan that was originally taken from the Money Purchase Plan in December 1989 and renewed in 1992 when the Money Purchase Plan was merged into the Profit Sharing Plan. The $50,467.46 payment in November 1996 represented the principal plus interest due on the outstanding loan to the Profit Sharing Plan.

3. Attached to the Affidavit of Raymond B. Yates filed in support of his Motion for Summary Judgment as Exhibit C, are the trust financial records of the Money Purchase Plan and Profit Sharing Plan for the relevant times.

4. As of June 30, 1996, there were four participants in the Profit Sharing Plan. There has always been more than one participant in the Plan since its creation.

4. Dr. Raymond B. Yates' account balance in the Profit Sharing Plan as of June 30, 1996 was $366,852.25. The plan year for the Profit Sharing Plan is July 1 through June 30. Therefore, this is the year-end balance of Dr. Yates' Profit Sharing Plan account closest to the payoff date of the loan in November 1996.

Respectfully submitted this 28th day of June 1999.

KENNERLY, MONTGOMERY & FINLEY, P.C.
By: James A. Holifield, Jr., BPR#015494
Attorney for Defendant Raymond B. Yates,
M.D., P.C. Profit Sharing Plan and
Raymond B. Yates, Trustee
4th Floor, NationsBank Bldg.
550 Main Street
Knoxville, TN 37902
(423) 546-7311

MCCORD, TROUTMAN & IRWIN, P.C.
By: C. Mark Troutman, Esq.
Attorney for Plaintiff
Suite 1300, First Tennessee Plaza
Knoxville, Tennessee 37901

FILED
JUN 28, 1999
UNITED STATES BANKRUPTCY COURT EASTERN
DISRICT OF TENNESSEE

EXHIBIT F

ERISA Opinion Letter 79-08A, 01/30/1979

Reference(s): ERISA §403, ERISA §403(c), ERISA §403(c)(1), ERISA §3, ERISA §3 (7), ERISA §3(6)

Mr. Robert W. Gilbert
Suite 305
400 South Beverly Drive
Beverly Hills, California 90212
Mr. Joseph M. McLaughlin
McLaughlin and Irvin
Suite 300
800 West Sixth Street
Los Angeles, California 90017

Gentlemen:

This is in reply to your letter of November 9, 1978, requesting an advisory opinion concerning the eligibility of Mrs. Joan Adams for participation in the Southern California Retail Clerk Unions and Food Employers Council Joint Pension Trust Fund (the Fund). Specifically, you ask whether Mrs. Adams must be automatically precluded from participating in the Fund by section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (ERISA).

You represent that the Fund is a multiemployer fund jointly managed by employer and employee representatives and is subject to title I of ERISA. You also represent that Mrs. Adams, who participated in the Fund from September, 1971, until May, 1977, is the wife of the owner of a 12 1/2 percent partnership interest in Vicente Foods, where Mrs. Adams is employed and which contributes to the Fund on her behalf. You assert

that Mr. Adams owns his partnership interest as separate property, not as community property.

The Department of Labor is of the opinion that Mrs. Adams is not precluded from participating in the Fund by section 403(c)(1). Section 403(c)(1) of ERISA provides generally that the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants m the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The term "participant," as it is used in ERISA section 403(c)(1), is defined in ERISA section 3(7) to include "any employee ... of an employer ... who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer ... or whose beneficiaries may be eligible to receive any such benefit." ERISA section 3(6) defines the term "employee" as "any individual employed by an employer." Regulation section 2510.3-3, which interprets section 3(3) of ERISA for purposes of title I thereof, provides, in part, that "[f]or purposes of this [regulation,] ... a partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership." However, that regulation is not intended to construe "employee" as that term is used in section 3 (6 of ERISA. Rather, the regulation defines "employee" only for the limited purpose of determining whether a plan has any employees, in connection with determining whether a plan exists within the meaning of title I of ERISA. Since the Fund appears to cover a number of employees and its status as a plan under title I does not appear to be in doubt, the definition of "employee" in regulation section 2510.3-3 has no relevance to the question of Mrs. Adams' status under the plan. Thus, Mrs. Adams, the wife of a partner in the firm employing her, is a participant in the Fund for

purposes of section 403(c)(1) if she is employed by a contributing employer and is otherwise eligible to participate under the terms of the Fund as properly administered according to all applicable laws and plan documents.

This letter is not intended to interpret or express any opinion concerning the Labor Management Relations Act to which you referred in your inquiry or concerning any other statute (other than ERISA title I and regulations pursuant thereto).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Lan D. Lanoff
Administrator of Pension and Welfare Benefit Programs
cc: Mr. Joseph M. McLaughlin

EXHIBIT G

ERISA Opinion Letter 99-04A, 02/04/1999
"Working Owners" can be participants in ERISA Pension Plan.
Reference(s): ERISA section 3(7)
John P. Counts, Esq.
David Potts-Dupre, Esq.
Counts & Kanne
Suite 444
1125 15th Street, NW Washington, D.C. 20005

Dear Messrs. Counts and Potts-Dupre:

This is in response to your request for an advisory opinion concerning the definition of "participant" provided in section 3(7) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether individuals who own business enterprises, either wholly or in part, and who provide personal services to those businesses may be "participants," within the meaning of section 3(7) of ERISA, in a multi-employer employee benefit plan. You state that the business enterprises that are the subject of this request include businesses that are operated as corporations, sole proprietorships, and partnerships.

You submit your request on behalf of the National Electrical Benefit Fund (the NEBF), a multi-employer pension plan established jointly by the International Brotherhood of Electrical Workers (IBEW) and the National Electrical Contractors Association (NECA) pursuant to collective bargaining. You describe the NEBF as the largest construction industry fund in the United States, with approximately 375,000 participants, over 14,000 contributing employers, and plan assets of almost five billion dollars.

The documents that you have submitted indicate that an individual can become eligible to participate in the NEBF only as a result of an employer's having executed a participation agreement with the NEBF, obligating the employer to make contributions on behalf of at least some of its employees. See Restated Employees Benefit Agreement and Trust for the National Electrical Benefit Fund (hereinafter Trust Agreement), Part I, Provision 4; sections 1.7, 1.8, 1.18, 6.3.3. An employer must agree at a minimum to make contributions on behalf of its bargaining unit employees. Id. section 6.3.1. Such an employer may elect, in addition, to contribute on behalf of its "non-bargaining unit employees." An employer may contribute on behalf of all "non-bargaining unit employees" or only those non-bargaining unit employees who were formerly bargaining unit members ("alumni"). Id.

With respect to bargaining unit employees, a participating employer must contribute to the NEBF an amount equal to three percent of "all wages and other compensation paid to, or accrued by, the Covered Employees in the ... bargaining unit for services performed for the Covered Employer." Id. section 6.2.1. For non-bargaining unit employees, the employer must contribute to the NEBF an amount equal to the lesser of

"(a) 3% of all wages and other compensation which the Covered Employer would pay, or which the [non-bargaining unit] Covered Employees would accrue, if the Covered Employees were receiving the wage rate received by the highest number of employees in the appropriate ... bargaining unit and working the normal straight time hours provided for in the appropriate labor agreement, or (b) 3% of all wages and other compensation paid to, or accrued by, the [non-

bargaining unit] Covered Employees for services performed for the Covered Employer ...."

Id. Section 6.2.2.

The documents that you have supplied indicate that the NEBF provides a pension benefit, which may be paid as an early retirement pension or a normal retirement pension, and a disability benefit. A participant becomes vested in his or her pension benefit upon earning at least five vesting service credits. [1] Pension benefits for vested participants are calculated by multiplying the participant's benefit service credits [2] by fixed dollar amounts that are specified in the plan. As a result, the amount of a participant's monthly pension benefit is not dependent upon the participant's actual income prior to retirement or the actual amount of contributions that an employer made on his or her behalf, but rather upon seniority in the NEBF.

You represent that the trustees of the NEBF currently interpret its plan documents to permit "working owners"' [3] to be treated as employees eligible to participate in the NEBF and therefore to become participants in the NEBF. [4] The eligible "working owners" include any "owner that earns wages or self-employment income from a company," including sole proprietors of unincorporated businesses. You indicate that the working owners who currently participate in the NEBF are journeyman electricians who had worked initially as bargaining unit members for other employers that contributed to the NEBF on their behalf. They subsequently acquired ownership interests in those employers or started their own electrical businesses, sometimes in partnership with other similarly situated individuals, sometimes by creating wholly-owned corporations, and sometimes operating as sole

proprietors. They continue to work as electricians and in some cases employ other union members covered by the NEBF. Most of these working owners had earned vested pension benefits in the NEBF based on their previous service as bargaining unit employees, and they began accruing additional service credits when the NEBF changed its eligibility rules in 1994 to permit working owners to participate.

You represent that the employer's payroll reports, submitted monthly to the NEBF, are used to determine an employer's contributions, based on the working owner's reported "wages," and a working owner's service credits, based on the working owner's reported hours of service. You further represent that reporting employers determine a working owner's "wages" by determining the greater of the working owner's actual gross earnings subject to employment tax for that month or the amount the working owner would have earned if he had worked at normal straight-time hours for the month at the applicable journeyman's rate. The working owner's hours of service are reported as the actual hours the working owner worked for the business during the month.

Section 3(7) of Title I of ERISA provides that a "participant" is "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit." Section 3(6) in turn defines an "employee" as "any individual employed by an employer." Finally; section 3(5) defines "employer" as "any person acting directly as an employer, o indirectly in the interest of an

employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity." Title I of ERISA contains multiple indications, albeit indirect, that Congress assumed that a "working owner" could be a "participant" in an employee benefit plan sponsored by the business in which that working owner held an ownership right, regardless of the legal form in which the business was operated. For example, section 401(a)(2) exempts certain partnership agreements from the fiduciary provisions of Part 4. This exemption would be meaningless if the partnership agreements themselves (which cover only partners, one of the categories of "working owners") were not otherwise plans covered by

Title I. Further section 403(b)(3)(A) specifically exempts from the trust requirement of section 403(a) a plan "some or all of the participants of which are employees described in section 401(() (1) of the Code [emphasis added]." This exemption takes as its basis the assumption that the employees described in Code section 401(()(1), namely self-employed individuals (including "working owners"), are legitimate "participants" within the meaning of Title I Also, section 408(b)(1) exempts from section 406's prohibition of specified transactions certain non-discriminatory loans made to plan participants, including highly compensate(employees, but section 408(d)(1) eliminates that exemption for owner-employees as defined in section 401(()(3) of the Code. Inasmuch as the owner-employers described in Code section 401(()(3) are sole proprietors and more than ten-percent partners, it is clear that the provisions in section 408 of Title I assume that such "working owners" are "participants" in the plans from which those loans would be made.

These indications of Congressional intent are supported and reinforced by the treatment of "working owners" under the provisions of Title II and Title IV of ERISA. [5] Section 401 (c) of the Internal Revenue Code (the Code) provides that self-employed individuals are included as "employees" under Code section 401 (a) to the extent that they have earned income "with respect to a trade or business in which personal services of the [individual] are a material income producing factor." Code section 401(c)(2)(A). Code section 401(c) further imposes specific additional requirements on tax-qualified pension plans that provide benefits to "owner-employees," a term defined in Code section 401(c) (3) to include employees who own the entire interest in an unincorporated trade or business or more than 10 percent of a partnership. It is thus patently clear that Title II of ERISA permits "working owners" to receive the tax benefits that flow from participation as "participants" in pension plans that meet the qualification requirements of Code section 401(a).

Title IV of ERISA (the termination insurance provisions) also expressly includes "working owners" among the "participants" who receive its protections. See ERISA section 4001(b)(1) ("[a]n individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of [Code] section 401 (c)(1) . . ."). Section 4021(b)(9) of ERISA excludes from coverage under Title IV only those pension plans that are "established and maintained exclusively for substantial owners," i.e., sole proprietors and more than ten-percent owners of partnerships and corporations. See ERISA section 4022(b)(5)(A) (defining "substantial owner"). Title IV limits the amount of benefits that the PBGC guarantees to "substantial owners" who

participate in single employer plans, but nonetheless provides a basic guarantee of such owners' pension benefits. Such a guarantee would be meaningless if Title I did not permit such owners to be participants in ERISA- covered pension plans.

In our view, the statutory provisions of ERISA, taken as a whole, reveal a clear Congressional design to include "working owners" within the definition of "participant" for purposes of Title I of ERISA. Congress could not have intended that a pension plan operated so as to satisfy the complex tax qualification rules applicable to benefits provided to "owner employees" under the provisions of Title II of ERISA, and with respect to which an employer faithfully makes the premium payments required to protect the benefits payable under the plan to such individuals under Title IV of ERISA, would somehow transgress against the limitations of the definitions contained in Title I of ERISA. Such a result would cause an intolerable conflict between the separate titles of ERISA, leading to the sort of "absurd results" that the Supreme Court warned against in Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318 (1992). [6]

Therefore, it is the view of the Department that there is nothing in the definitions of Title I of ERISA that would preclude a pension plan, including the NEBF, from extending plan coverage to "working owners," as described in your submission, where such coverage is otherwise consistent with the documents and instruments governing the plan and does not violate any other provisions of Title I. [7]

ERISA's fiduciary standards, however, require compliance with any other applicable federal law. Pursuant to ERISA section 5140, nothing in Title I of

ERISA shall be construed to alter, amend, modify, invalidate, impair, or supersede any federal law or any rule or regulation issued pursuant to such federal law. Such federal laws include any requirements applicable to multi-employer benefit plans under the Labor Management Relations Act (LMRA). Several federal courts interpreting the LMRA have upheld decisions by plan trustees to exclude owner-employees on the ground that their inclusion would violate the LMRA. See, e.g., Todd v. Benal Concrete Const. Co., Inc., 710 F.2d 581 (9th Cir. 1983); Aitken v. GCU-Employer Retirement Fund, 604 F.2d 1261 (9th Cir. 1979). The Department is not authorized to issue opinions regarding the LMRA. Accordingly, the fiduciary of a plan subject to the LMRA that includes "working owners" should seek legal advice regarding the propriety of the participation of "working owners" in such plan under the LMRA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,
Susan G. Lahne
Acting Chief
Division of Fiduciary Interpretations
Office of Regulations and Interpretations

FOOTNOTES

1. One vesting service credit is earned for each year after 1965 in which a participant is credited with 1000 hours of covered service for covered employment

(employment during a period for which an employer is obligated to make contributions for that employee).

2. One benefit service credit is similarly earned for each year after 1965 in which a participant is credited with 1000 hours of covered employment.

3. By the term "working owner," you apparently mean any individual who has an equity ownership right of any nature in a business enterprise and who is actively engaged in providing services to that business, as distinguished from a "passive" owner, who may own shares in a corporation, for example, but is not otherwise involved in the activities in which the business engages for profit.

4. This current practice has been followed only since January, 1994. In the course of its history (since its creation in the early 1960's), the NEBF's practices have varied regarding participation by individuals who have equity ownership rights in business enterprises that operate in the industry covered by the IBEW.

5. Although we rely on certain provisions of Title II and Title IV in reaching the conclusions expressed in this opinion, nothing in this opinion should be construed as interpreting the provisions of those Titles that lie within the interpretive jurisdiction of the Department of the Treasury and the Pension Benefit Guaranty Corporation.

6. In Darden, the United States Supreme Court held that the definition of "employee" provided in section 3(6) of Title I did not include an individual who was an independent contractor to the employer that established and maintained the plan. In reaching this conclusion, the Court first sought to determine whether ERISA contained any provision "either giving specific guidance

on the term's meaning or suggesting that construing it to incorporate traditional agency law principles would thwart the congressional design or lead to absurd results." Id. at 323. Finding no guidance in the statute itself, the Court concluded that, "[w]here Congress uses terms that have accumulated settled meaning under ... the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." 503 U.S. at 322. We follow here the Court's analysis in Darden, although with a different result, inasmuch as we find ample guidance in ERISA as to Congress' specific intent to treat "working owners" as "participants."

7. In its regulation at 29 C.F.R. 2510.3-3, the Department clarified that the term "employee benefit plan" as defined in section 3(3) of Title I does not include a plan the only participants of which are "[a]n individual and his or her spouse ... with respect to a trade of business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse" or "[a] partner in a partnership and his or her spouse." The regulation further specifies, however, that a plan that covers as participants "one or more common law employees, in addition to the self-employed individuals" will be included in the definition of "employee benefit plan" under section 3 (3). The conclusion of this opinion, that such "self-employed individuals" are themselves "participants" in the covered plan, is fully consistent with that regulation.

General Docket
US Court of Appeals for the Sixth Circuit
Court of Appeals Docket #: 00-6023
Filed: 8/7/00
Nsuit: 0
Yates v. Hendon
Appeal from: Eastern District of Tennessee at Knoxville

Case type information:
1) bankruptcy
2) District Court
3)

Lower court information:

District: 0649-3 : 99-00600
Court Reporter: Elizabeth Coffey
Trial Judge: Richard Stair, US Bankruptcy Judge
Trial Judge: Curtis L. Collier, U.S. District Judge
Date Filed: 11/24/99
Date order/judgment: 6/27/00
Date NOA filed: 7/25/00

Fee status: paid

Prior cases:
None
Current cases:
None

00-6023 Yates v. Hendon

In re: RAYMOND B. YATES
Debtor

WILLIAM T. HENDON, Trustee — Conrad M. Troutman
Appellee — FTS 566-4004
423-566-6001
[COR LD NTC ret]
Troutman & Troutman
240 W. Central Avenue, Suite 10
P.O. Box 1757
LaFollette, TN 37766

v.

RAYMOND B. YATES, M.D., P.C. Profit Sharing Plan — William S. Lockett, Jr.
Appellant — FTS 524-1773
865-546-7311
[COR NTC ret]
James A. Holifield, Jr.
FTS 524-1773
865-546-7311
[COR LD NTC ret]
Kennerly, Montgomery & Finley
550 Main Avenue
Fourth Floor Nationsbank Center
Knoxville, TN 37902

RAYMOND B. YATES, Trustee — William S. Lockett, Jr.
Appellant — (See above)
[COR NTC ret]
James A. Holifield, Jr.

(See above)
[COR LD NTC ret]

00-6023 Yates v. Hendon

In re: RAYMOND B. YATES

Debtor

WILLIAM T. HENDON, Trustee

Appellee

v.

RAYMOND B. YATES, M.D., P.C. Profit Sharing Plan; RAYMOND B.
YATES, Trustee

Appellants

00-6023 Yates v. Hendon

8/7/00 Bankruptcy Case Docketed. Notice filed by Appellants Raymond B. Yates, Raymond B. Yates. Transcript needed: y (ac)

8/16/00 APPEARANCE filed by Attorney Conrad M. Troutman for Appellee William T. Hendon [00-6023] (ac)

8/18/00 APPEARANCE filed by Attorney James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates [00-6023] (ac)

8/18/00 PRE-ARGUMENT STATEMENT filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates [00-6023] (ac)

8/18/00 TRANSCRIPT ORDER FORM filed by James A. Holifield for Appellant Raymond B. Yates, Appellant Raymond B. Yates: reporter Elizabeth Coffey, transcript ordered on /16/00 [00-6023] [2209535-1] response due by 8/28/00 for Coffey [00-6023] (blh)

9/14/00 LETTER SENT by blh to Court Reporter Elizabeth Coffey regarding transcript. Transcript was ordered on 8/16/00; no confirmation. response due by 9/25/00 [00-6023] (blh)

9/20/00 Pre-Argument Conference work complete. (lmn)

9/22/00 TRANSCRIPT ORDER completed by court reporter Elizabeth Coffey for Document [2209535-1] transcript involving, James A. Holifield Jr., Elizabeth Coffey. Number of pages: 17 telephone conversation with ctr. [00-6023] (blh)

9/28/00 BRIEFING LETTER SENT setting briefing schedule: appellant brief due 11/7/00; appellee brief due 12/7/00; reply brief 12/21/00; appendix due 12/28/00; final briefs due 1/18/01. [00-6023] (ac)

10/6/00 Record requested from district court. (ksc)

10/24/00 CERTIFIED RECORD filed . Volumes include 1 Tr; 1 w/2 expandables (bankruptcy) Pl. [00-6023] (ksc)

11/7/00 PROOF BRIEF filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates. Certificate of service date 11/7/00. Number of Pages: 60. [00-6023] • (ac)

11/7/00 Request to require oral argument filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates [00-6023] (ac)

12/7/00 PROOF BRIEF filed by Conrad M. Troutman for Appellee William T. Hendon. Certificate of service date 12/6/00 . Number of Pages: 33. [00-6023] • (ac)

12/7/00 Request to require oral argument filed by Conrad M. Troutman for Appellee William T. Hendon [00-6023] (ac)

12/21/00 PROOF REPLY BRIEF filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates Certificate service date 12/21/00 [00-6023] (ac)

12/21/00 APPENDIX filed by James A. Holifield for Appellants Raymond. Yates, Raymond B. Yates. Copies: 5. Certificate ofservice date 12/21/00 [00-6023] (ac)

1/17/01 FINAL BRIEF filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates. Copies: 7. Certificate service date 1/17/01 Number of Pages: 59. [00-6023] (ac)

1/17/01 Request to require oral argument filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates [00-6023] (ac)

1/17/01 FINAL REPLY BRIEF filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates. Copies: 7 Certificate of service date 1/17/01 Number of Pages: 12. [00-6023] (ac)

1/18/01 FINAL BRIEF filed by Conrad M. Troutman for Appellee William T. Hendon. Copies: 7. Certificate of service date 1/17/01 . Number of Pages: 33. [00-6023] (ac)

1/18/01 Request to require oral argument filed by Conrad M. Troutman for Appellee William T. Hendon [00-6023] (ac)

3/9/01 ADDITIONAL CITATION filed by James A. Holifield for Appellants Raymond B. Yates, Raymond B. Yates. Certificate service date none but served. [00-6023] (ac)

8/10/01 Oral argument date set for October 23, 2001 in court room 403. Notice of argument sent to counsel. [00-6023] (rld)

8/24/01 APPEARANCE filed by Attorney William S. Lockett for Appellants Raymond B. Yates, Raymond B. Yates [00-6023] (ac)

10/23/01 CAUSE ARGUED on 10/23/01 by William S. Lockett for Appellant Raymond B. Yates, Appellant Raymond B. Yates, Conrad M. Troutman for Appellee William T. Hendon before Judges Nelson, Clay, Garwood. [00-6023] (me)

4/19/02 OPINION filed: The judgment of the district court is AFFIRMED, decision for publication pursuant to local rule 206. [00-6023] David Nelson, Authoring Judge, Eric L. Clay, Will L. Garwood, Circuit Judges. (ac)

4/19/02 JUDGMENT: AFFIRMED. (ac)

5/3/02 PETITION for en banc rehearing filed by James A. Holifield for Appellant Raymond B. Yates. Certificate of service date 5/3/02. [00-6023] (blh)

5/9/02 LETTER SENT by blh to Conrad M. Troutman for Appellee William T. Hendon notifying that party is directed to respond to a petition for en banc rehearing [2546766-1] filed by James A. Holifield Jr. . Response due by 5/23/02. [00-6023] . (blh)

5/23/02 RESPONSE to a petition for en banc rehearing [2546766-1] filed by James A. Holifield Jr. . Response filed by Conrad M. Troutman for Appellee William T. Hendon. Certificate of service date 5/22/02. [00-6023] (blh)

6/20/02 ORDER filed denying petition for en banc rehearing [2546766-1] filed by James A. Holifield Jr. [00-6023]. David A. Nelson, Eric L. Clay, Will L. Garwood (5th Circuit), Circuit Judges. (blh)

6/28/02 MANDATE ISSUED with no cost taxed [00-6023] (ac)

7/15/02 CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [00-6023] . Volumes included: 1 w/2 expandables Pl;. (ksc)

7/29/02 Record acknowledgment received from the district court. Acknowledged by: Angela Brush. Acknowledgment date: 7/26/02. [00-6023] (yh)

9/26/02 U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Raymond B. Yates, Appellant Raymond B. Yates . Filed in the Supreme Court on 09-18-02 , Supreme Ct. case number: 02-458 . [00-6023] (swh)

7/7/03 U.S. Supreme Court letter filed granting petition for writ of certiorari [2622344-1] filed by Raymond B. Yates, Raymond B. Yates [00-6023] . Filed in the Supreme Court on 06-27-03 . (swh)

U.S. District Court

Eastern District of Tennessee (Knoxville)

CIVIL DOCKET FOR CASE #: 99-CV-600

Yates, et al v. Hendon, et al

Filed: 11/24/99
Assigned to: Honorable Curtis L Collier
Demand: $0,000
Nature of Suit: 422
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in Adv. Proc : is 98-3088
Dkt # in US Bankruptcy : is 96-34511
Cause: 28:0158 Notice of Appeal re Bankruptcy Matter

RAYMOND B YATES, Debtor
In re

James A Holifield, Jr
[COR LD NTC]
Kennerly, Montgomery & Finley, PC
P O Box 442
Knoxville, TN 37901-0442
865-546-7311

Donna W Temple, Chief Deputy Clerk
[COR LD NTC]
United States Bankruptcy Court
Howard H. Baker Jr. U.S. Courthouse
800 Market Street
Suite 330

Knoxville, TN 37902
865-545-4279

Richard S Stair, Jr
[COR LD NTC]
United States Bankruptcy Court
Howard H. Baker Jr. U.S. Courthouse
800 Market Street
Suite 330
Knoxville, TN 37902
865-545-4279

RAYMOND B YATES, M.D., P.C. Profit Sharing Plan
appellant

Craig J Donaldson
[COR]
James A Holifield, Jr
(See above)

[COR LD NTC]
Kennerly, Montgomery & Finley, PC
P O Box 442
Knoxville, TN 37901-0442
865-546-7311

RAYMOND B YATES, Trustee
appellant

Craig J Donaldson
(See above)
[COR]
James A Holifield, Jr
(See above)
[COR LD NTC]

v.

WILLIAM T HENDON, Trustee

C Mark Troutman

appellee [COR LD NTC]
Troutman & Troutman
P O Box 1757
Lafollette, TN 37766
423-566-6001

DOCKET PROCEEDINGS

DATE # DOCKET ENTRY

11/24/99 1 BANKRUPTCY RECORD ON APPEAL Sent R8007 letter (ab2) [Entry date 11/29/99]

12/14/99 2 APPELLANT's Brief by appellants Raymond B Yates, M.D., P.C. Profit Sharing Plan and Raymond B Yates, Trustee re [1-1] (Exhibits A-H attch) C/S (ab) [Entry date 12/15/99]

12/30/99 3 MOTION by appellee William T Hendon for an extension of time within which to file pla/appellee's brief (proposed order submitted) C/S (ab) [Entry date 01/05/00]

1/6/00 – REMARK: file sent to Chattanooga (ab) [Entry date 01/06/00]

1/10/00 4 APPELLEE's brief by appellee William T Hendon re [1-1] C/S (ab2) [Entry date 01/11/00]

1/13/00 – NOTICE OF HEARING mailed; In-court hearing set for 10:30 4/25/00 before Honorable Curtis L. Collier in Knoxville (cc: all counsel) (ab) [Entry date 01/13/00]

1/13/00 5 ORDER by Honorable Curtis L. Collier granting pla/appellee's motion for an extension of time within which to file pla/appellee's brief [3-1] until 1/10/00 (cc: all counsel) (ab) [Entry date 01/13/00]

1/19/00 6 MOTION by deft/appellant Raymond B Yates for extension of time through and including 1/27/00 to file reply brief C/S (proposed order submitted) (ab) [Entry date 01/20/00]

1/27/00 7 REPLY brief by appellants Raymond B Yates, MD, PC Profit Sharing Plan, and Raymond B Yates, Trustee re [1-1] C/S (w/attachments) (ab) [Entry date 01/28/00]

1/28/00 8 AGREED ORDER by Honorable Curtis L. Collier; granting dfts/appellant's motion for extension of time through and including 1/27/00 to file reply brief [6-1] (cc: all counsel) (aw) [Entry date 01/28/00]

4/25/00 9 MINUTES: (USDJ-Curtis Collier); In-court hearing held 4/25/00. Oral argument on bankruptcy appeal. Opinion to be issued. CD: Cyndee Holder; CR: Elizabeth Coffey (dhj) [Entry date 04/25/00]

6/26/00 – REMARK: File returned from Chattanooga (dhj) [Entry date 06/26/00]

6/26/00 10 MEMORANDUM by Honorable Curtis L. Collier in support of following order. (cc: all counsel) (dhj) [Entry date 06/27/00]

6/26/00 11 ORDER by Honorable Curtis L. Collier Affirming the findings of the Bankruptcy Court as to the following: Dr. Yates cannot participate in the Profit Sharing Plan under ERISA, and is ineligible to benefit from the protections of ERISA; Dr. Yate's interest in the Plan is not protected by the restriction on alienation contained in Tenn. Code Ann. 26-2-104(b); the Chapter 7 Trustee may recover, pursuant to 11 USC 550, avoidable transfers made by Dr. Yates to the Plan, to include the $50,467,46 loan repymt. The court AFFIRMS the Bankruptcy Court's grant of summary jgm in favor of Pla-Appellee and denies defts-Appellants' petition for reversal; dismissing case OB 178 Pg 91 (cc: all counsel) (dhj) [Entry date 06/27/00]

7/25/00 12 NOTICE OF APPEAL by appellant from Dist. Court decision [11-2], [10-1] (cc: all counsel) (dhj) [Entry date 07/28/00]

7/25/00 – RECEIVED appeal fee re [12-1] in amount of $ 105.00 (Receipt # 19382) (dhj) [Entry date 07/28/00]

7/28/00 – TRANSMISSION FORM - forwarding certified copies of notice of appeal, updated docket entries to USCA: [12-1] (cc: all counsel) (dhj) [Entry date 07/28/00]

8/3/00 13 STATEMENT OF ISSUES PRESENTED ON APPEAL by appellant and.... (dhj) [Entry date 08/08/00]

8/3/00 13 ....DESIGNATION of RECORD by appellant designating docts 1,2,4,7,9,10,11,12 C/S (dhj) [Entry date 08/08/00]

8/3/00 14 NOTICE by appellants of substitution of counsel noting that Al Holifield, Jr is counsel of record. C/S (dhj) [Entry date 08/08/00] [Edit date 08/21/00]

8/14/00 – NOTIFICATION by Circuit Court of Appellate Docket Number 00-6023 Case Mgr: Audrey Crockett (dhj) [Entry date 08/22/00]

8/18/00 15 DESIGNATION of RECORD by appellant designating docts: 1,2,4,7,9-12. C/S (dhj) [Entry date 08/22/00]

8/18/00 16 TRANSCRIPT Order by appellant Raymond B Yates, appellant Raymond B Yates for dates: 4/25/00 before Judge Collier (dhj) [Entry date 08/22/00]

8/21/00 – REMARK; File forwarded to Chattanooga per Annette for Elizabeth Coffey (dhj) [Entry date 08/21/00]

9/15/00 17 TRANSCRIPT of Oral Argumant held on April 25, 2000 before Judge Collier (Court Reporter Elizabeth Coffey) (aa) [Entry date 10/10/00]

9/27/00 – REMARK–file received by Knoxville office (aa) [Entry date 09/27/00]

10/10/00 – RECORD on Appeal sent to USCA re [12-1] (1) volume of pleadings; (1) transcript and (2) expandables (bankruptcy record) (entire file) (cc: all counsel) (dhj) [Entry date 10/10/00]

4/22/02 18 JUDGMENT from USCA affirming the decision of the District Court [12-1]; with slip opinion attached (aa) [Entry date 04/24/02]

7/1/02 19 MANDATE from USCA affirming the decision of the District Court; Appeal record returned ddl set for 8/1/02 (ab) [Entry date 07/01/02]

7/26/02 – RECORD on appeal returned from USCA consisting of 1 volume of pleadings, 1 transcript, and 2

expandable folders (bankruptcy record); appeal record returned ddl satisfied (ab) [Entry date 07/26/02]

8/5/02 – LETTER to USBC Clerk re: return of bankruptcy record (ab) [Entry date 08/05/02]

9/30/02 20 INFORMATIONAL COPY of Supreme Court letter of filing petition for writ of certiorari on 9/18/02. No. 02-458 (ab2) [Entry date 10/03/02]

7/9/03 21 LETTER from US Supreme Court that the petition for a writ of certiorari is granted (ab) [Entry date 07/10/03]

U.S. Bankruptcy Court

EASTERN DISTRICT OF TENNESSEE (Knoxville)

- *Bankruptcy Petition #:* 96-34511 *Date filed:* 12/2/96
- *Assigned to:* Judge Richard Stair, Jr.
- Chapter 7, involuntary, asset

* Parties *	* Attorneys *
RAYMOND B. YATES 2141 Pine Meade Road Knoxville, TN 37923 *SSN:* 435-54-3504 * Debtor *	**N. David Roberts, Jr.** P. O. Box 2189 Knoxville, TN 37901 865-546-3533
WILLIAM T. HENDON P.O. Box 23228 Knoxville, TN 37933-1228 * Trustee *	

Docket Proceedings

Date	Doc. No.	Docket Entry
12/2/96	1	Involuntary Petition. (Filing Fee $ 145.00 Receipt # 337680) (rjm) [EOD 12/04/96] [96-34511]
12/2/96	–	1 Summons(es) Issued on Raymond B. Yates (rjm) [EOD

		12/04/96] [96-34511]
12/4/96	2	Summons Served 12/3/96 on Raymond B. Yates. Involuntary Answer due on 12/23/96 for Raymond B. Yates MD (ldm) [EOD 12/06/96] [96-34511]
12/23/96	3	Motion By Debtor Raymond B. Yates To Dismiss Case . (ldm) [EOD 12/24/96] [96-34511]
12/31/96	4	Order to Set Hearing RE: [3-1] Motion To Dismiss Case by Raymond B. Yates MD scheduled For 9:00 2/6/97 at Ctrm 15th fl First TN Plaza; Creditors in addition to the petitioning creditor, NationsBank of Tennessee, NA, shall have through January 28, 1997, to join the involuntary petition. (ldm) [EOD 12/31/96] [96-34511]
1/2/97	5	Response By James A. McIntosh for Petitioning Creditor NationsBank of Tennessee, N.A. To [3-1] Motion To Dismiss Case by Raymond B. Yates MD . (ldm) [EOD 01/03/97] [96-34511]
1/6/97	6	Order (RS), that the February 6, 1997 hearing on the debtor's

		Motion to Dismiss will be an evidentiary hearing at which time the court will determine whether the debtor has twelve or more creditors. Paragraph one of the Order entered on December 3, 1996, fixing January 28, 1997, as the date by which additional creditors shall join the involuntary petition is VACATED. If the court determines at the February 6, 1997 hearing that the debtor, in fact, has twelve or more creditors it will, at that hearing, fix the date by which such creditors must join the petition. . (ldm) [EOD 01/06/97] [96-34511]
2/4/97	7	Amended List of Creditors . Filed by: Debtor Raymond B. Yates (ldm) [EOD 02/06/97] [96-34511]
2/5/97	8	Joinder of Petitioning Creditor Katherine Terry in Involuntary Petition. (ldm) [EOD 02/07/97] [Edit date 02/11/97] [96-34511]
2/5/97	9	Joinder of Petitioning Creditor William H. Brittain in Involuntary Petition. (ldm) [EOD 02/07/97] [Edit date 02/11/97] [96-34511]
2/6/97	–	Hearing Held Re: [3-1] Motion To Dismiss Case by Raymond B. Yates

		MD . Motion denied; Trial on contested involuntary petition set March 3, 1997, Debtor's Answer due February 13, 1997; Statement of Issues due 10 days prior to trial. Briefs due 7 days prior to trial. Order by the Court. (ldm) [EOD 02/06/97] [96-34511]
2/6/97	10	Order to Set Hearing RE: [1-1] on the Contested Involuntary Petition scheduled For 1:30 3/3/97 at Ctrm 15th fl First TN Plaza; The Debtor's Motion to Dismiss is Denied. The Debtor shall file his answer to the involluntary petition on or before February 13, 1997. The Debtor and petitioning creditors shall file a joint statement of all issues to be resolved by the court under the contested petition on or before February 21, 1997. The parties shall file brief in support of their respective theories on or before February 24, 1997. (ldm) [EOD 02/06/97] [Edit date 02/11/97] [96-34511]
2/12/97	11	Motion By Petitioning Creditor NationsBank of Tennessee, N.A. For Examination of Debtor Under Rule 2004 . (ldm) [EOD 02/13/97] [96-34511]

2/13/97	12	Answer of Raymond B. Yates to the involuntary petition would state that the petition should be dismissed in that the requisite number of petitioning creditors has not been met. (ldm) [EOD 02/14/97] [96-34511]
2/14/97	13	Order (RS) Granting [11-1] Motion For Examination of Debtor Under Rule 2004 by NationsBank of Tennessee, N.A. . (ldm) [EOD 02/14/97] [96-34511]
2/14/97	14	Motion By Petitioning Creditor NationsBank of Tennessee, N.A. For Summary Judgment . (ldm) [EOD 02/14/97] [96-34511]
2/14/97	15	Memorandum By Petitioning Creditor NationsBank of Tennessee, N.A. In Support Of [14-1] Motion For Summary Judgment by NationsBank of Tennessee, N.A. . (ldm) [EOD 02/14/97] [96-34511]
2/14/97	16	Notice By Debtor Raymond B. Yates To Take Deposition (ldm) [EOD 02/18/97] [Edit date 02/19/97] [96-34511]
2/18/97	17	Order (RS), That the court directs the Debtor to respond to the

		Motion for Summary Judgment filed February 14, 1997, by NationsBank of Tennessee, NA on or before February 26, 1997 . (ldm) [EOD 02/18/97] [Edit date 02/19/97] [96-34511]
2/20/97	18	Motion By Petitioning Creditor NationsBank of Tennessee, N.A. To Expedite Hearing Re: ([14-1] Motion For Summary Judgment by NationsBank of Tennessee, N.A.) . (ldm) [EOD 02/20/97] [96-34511]
2/20/97	19	Order (RS) Granting [18-1] Motion To Expedite Hearing Re: ([14-1] Motion For Summary Judgment by NationsBank of Tennessee, N.A.) Hearing set for 1:30 2/27/97 at Ctrm 15th fl First TN Plaza . (ldm) [EOD 02/20/97] [96-34511]
2/21/97	20	Statement of Issues by Petitioning Creditor William H. Brittain, Petitioning Creditor Katherine Terry, Petitioning Creditor NationsBank of Tennessee, N.A., Debtor Raymond B. Yates (ldm) [EOD 02/24/97] [96-34511]
2/24/97	21	Motion By Debtor Raymond B. Yates to strike or Modify Caption of Proceedings (ldm) [EOD

		02/24/97] [96-34511]
2/24/97	22	Brief By Petitioning Creditor NationsBank of Tennessee, N.A. In Support Of its position. (ldm) [EOD 02/24/97] [96-34511]
2/25/97	23	Affidavit of William H. Brittain (ldm) [EOD 02/26/97] [96-34511]
2/25/97	24	Motion By Debtor Raymond B. Yates For Summary Judgment and Response to Petitioner's Motion for Summary Judgment . (ldm) [EOD 02/26/97] [96-34511]
2/27/97	25	Order (RS) Granting [21-1] Motion to strike or Modify Caption of Proceedings by Raymond B. Yates MD . Caption of this case is changed to read RAYMOND B. YATES. (ldm) [EOD 02/27/97] [96-34511]
2/27/97	26	Order (RS) Granting [14-1] Motion For Summary Judgment by NationsBank of Tennessee, N.A. against the Debtor, Raymond B. Yates, is Sustained. Denying [24-1] Motion For Summary Judgment and Response to Petitioner's Motion for Summary Judgment by Raymond B. Yates MD . An Order

		for Relief is entered against the Debtor, Raymond B. Yates, under Chapter 7 of title 11 of the United States Code. (ldm) [EOD 02/27/97] [96-34511]
2/27/97	26	Order For Relief is entered against the Debtor, Raymond B. Yates ;Last Day to File Proof of Claim (gov): 8/26/97 (ldm) [EOD 02/27/97] [96-34511]
2/27/97	–	Hearing Held Re: [14-1] Motion For Summary Judgment by NationsBank of Tennessee, N.A. . Motion granted; Order by the Court. (ldm) [EOD 02/27/97] [96-34511]
2/27/97	27	Notice of Appointment of Trustee, William Hendon (cjc) [EOD 02/27/97] [96-34511]
3/6/97	28	Application By Trustee William T. Hendon To Employ C. Mark Troutman and McCord, Troutman & Irwin, P.C. . (ldm) [EOD 03/07/97] [96-34511]
3/10/97	29	Memorandum Opinion containing Findings of Fact and Conclusions of Law Re: [24-1] Motion For Summary Judgment and Response

		to Petitioner's Motion for Summary Judgment by Raymond B. Yates . (jgm) [EOD 03/10/97] [96-34511]
3/11/97	30	Order (RS) Granting [28-1] Application To Employ C. Mark Troutman and McCord, Troutman & Irwin, P.C. by William T. Hendon . (ldm) [EOD 03/11/97] [96-34511]
3/17/97	31	Notice of Appearance And Request For Service Of Notice By Tenn. Commissioner of Revenue (ldm) [EOD 03/18/97] [96-34511]
4/4/97	32	Order (RS), That the Order for Relief in this involuntary case having been entered under Chapter 7 on February 27, 1997, and the Debtor having failed to timely file his statements and schedules, the court accordingly directs that all statements and schedules be filed on or before April 15, 1997. . (ldm) [EOD 04/04/97] [96-34511]
4/11/97	–	Update Deadline ;Incomplete Filings Due on 4/15/97 for schedules and statment of affairs. (ldm) [EOD 04/11/97] [96-34511]
4/15/97	33	Disclosure of Compensation By Attorney For Debtor In the Amount

		of $ 150 an hour plus expenses. (ldm) [EOD 04/17/97] [96-34511]
4/15/97	34	Statement of Intent. (ldm) [EOD 04/17/97] [96-34511]
4/15/97	35	Schedules A - J (ldm) [EOD 04/17/97] [96-34511]
4/15/97	36	Statement of Financial Affairs. (ldm) [EOD 04/17/97] [96-34511]
4/22/97	–	Sec. 341 Meeting of Creditors scheduled For 12:00 5/13/97 At Meeting Room, Knoxville Last Day To Oppose Discharge: 7/14/97 ;Last Day to File Proofs Of Claim: 8/11/97 (rjm) [EOD 04/22/97] [96-34511]
4/22/97	37	Courts Certificate of Mailing Re: [0-0] First Meeting # of Notices: 76. (rjm) [EOD 04/22/97] [96-34511]
4/24/97	–	Sec. 341 Meeting of Creditors adjourned For 12:00 5/20/97 At Meeting Room, Knoxville (ldm) [EOD 04/25/97] [96-34511]
5/8/97	38	Notice of Appearance And Request For Service Of Notice By Anthony R. Steele for Creditor First Tennessee Bank, NA. (ldm) [EOD

		05/09/97] [96-34511]
5/20/97	–	Sec. 341 Meeting Held and Examination of Debtor ; Trustee's Report Due 10/31/97 . (vgs) [EOD 05/21/97] [96-34511]
5/28/97	39	Objection to Debtor's Claim of Exempt Property By Trustee William T. Hendon . (ldm) [EOD 05/29/97] [96-34511]
6/6/97	–	Hearing Re: [39-1] Exemption Objection by William T. Hendon scheduled For 9:00 6/19/97 at Ctrm 15th fl First TN Plaza (lsd) [EOD 06/06/97] [96-34511]
6/6/97	40	Courts Certificate of Mailing Re: [0-0] Hearing on Objectino by Trustee to Exemptions # of Notices: 7. (ldm) [EOD 06/06/97] [96-34511]
6/18/97	41	Amended [39-1] Exemption Objection . Filed by: Trustee William T. Hendon (ldm) [EOD 06/18/97] [96-34511]
6/19/97	–	Hearing called Re: [39-1] Exemption Objection by William T. Hendon . Objection adjourned indefinitely to be reset on request

		of either party. Order by the Court. (ldm) [EOD 06/20/97] [96-34511]
6/20/97	42	Order (RS), Upon consideration of the Trustee's Objection to Debtor's Claim of Exempt Property filed by the Chapter 7 Trustee, William T. Hendon, objecting to the Debtor's claimed exemption and after notice and a hearing held June 19, 1997, upon agreement of the parties, the court directs that the hearing on the Trustee's Objection is adjourned indefinitely, to be reset at the request of either of the Debtor or Trustee . (ldm) [EOD 06/20/97] [96-34511]
6/20/97	43	Application By Baker, Donelson and Caldwell James A. McIntosh for Petitioning Creditor NationsBank of Tennessee, N.A. For Compensation (Fees: $ 6,463.03,) incurred in connection with the filing of an involuntary bankruptcy petition . (ldm) [EOD 06/23/97] [96-34511]
6/25/97	–	Hearing Re: [43-1] Application For Compensation (Fees: $ 6,463.03,) incurred in connection with the filing of an involuntary bankruptcy petition by James A. McIntosh scheduled For 9:00 7/17/97 at Ctrm

		15th fl First TN Plaza (lsd) [EOD 06/25/97] [96-34511]
6/26/97	44	Courts Certificate of Mailing Re: [0-0] Hearing on application by petitioning creditor Nationsbank of Tennessee, N.A. to allow attorneys fees and expenses for Baker, Donelson, Bearman and Caldwell # of Notices: 81. (cjr) [EOD 06/26/97] [96-34511]
7/11/97	45	Motion By Trustee William T. Hendon To extend Time To file Sec. 727 Complaint . (ldm) [EOD 07/14/97] [96-34511]
7/17/97	–	Hearing Held Re: [43-1] Application For Compensation (Fees: $ 6,463.03,) incurred in connection with the filing of an involuntary bankruptcy petition by James A. McIntosh . Order by the Court. (ldm) [EOD 07/18/97] [96-34511]
7/18/97	46	Order (RS) Granting [43-1] Application For Compensation (Fees: $ 6,463.03,) incurred in connection with the filing of an involuntary bankruptcy petition by James A. McIntosh payment to Baker, Donelson, Bearman and Caldwell of $6463.03 in fees and

		$145.00 in expenses . (ldm) [EOD 07/18/97] [96-34511]
7/21/97	–	Hearing Re: [45-1] Motion To extend Time To file Sec. 727 Complaint by William T. Hendon scheduled For 9:00 8/7/97 at Ctrm 15th fl First TN Plaza (tmr) [EOD 07/21/97] [96-34511]
7/21/97	47	Courts Certificate of Mailing Re: [0-0] Hearing on Motion by Trustee to Extend the Sec. 727 Deadline # of Notices: 6. (ldm) [EOD 07/21/97] [96-34511]
8/7/97	–	Hearing called Re: [45-1] Motion To extend Time To file Sec. 727 Complaint by William T. Hendon . Deadline extended to October 16, 1997, Agreed Order to be submitted. (ldm) [EOD 08/08/97] [96-34511]
8/11/97	48	Agreed Order (RS) Granting [45-1] Motion To extend Time To file Sec. 727 Complaint by William T. Hendon ; Last Day to Oppose Discharge: 10/14/97 . (ldm) [EOD 08/11/97] [96-34511]
10/21/97	49	Order Discharging Debtor Raymond B. Yates. (ldm) [EOD

		10/21/97] [96-34511]
10/24/97	50	BNC Certificate of Service [49-1] Discharge Order by Raymond B. Yates . (ldm) [EOD 10/28/97] [96-34511]
1/27/98	51	Trustee's Interim Report. Trustee's Report Due 4/30/98 (ldm) [EOD 01/28/98] [96-34511]
4/16/98	52	Trustee's Interim Report. Trustee's Report Due 11/2/98 (ldm) [EOD 04/20/98] [96-34511]
8/5/98	–	Complaint (98-3088) William T. Hendon, Trustee vs. Raymond B. Yates, MD PC, Profit Sharing Plan, Raymond B. Yates and/or Quick & Reilly, Plan Administrator/Plan Trustee NOS 454 Recover Money/Property . (jgm) [EOD 08/07/98] [98-3088]
11/4/99	53	Motion By Trustee William T. Hendon To Compel Turnover of Property of the Estate . (sjp) [EOD 11/04/99] [96-34511]
11/4/99	54	Brief By Trustee William T. Hendon In Support Of [53-1] Motion To Compel Turnover of Property of

		the Estate by William T. Hendon . (sjp) [EOD 11/04/99] [96-34511]
11/10/99	–	Hearing Re: [53-1] Motion To Compel Turnover of Property of the Estate by William T. Hendon scheduled For 9:00 12/2/99 at Ctrm 1C Baker Crths Knox (jgm) [EOD 11/10/99] [96-34511]
11/12/99	55	Courts Certificate of Mailing Re: [0-0] Hearing on Motion by Trustee to Compel Turnover of Property # of Notices: 8. (cjr) [EOD 11/12/99] [96-34511]
11/24/99	56	Transmission of Record on Appeal to District Court RE: Notice of Appeal filed 9/13/99 in Adv. Proc. No. 98-3088. (jgm) [EOD 11/24/99] [96-34511]
11/24/99	57	Response By Raymond B. Yates, M.D., P.C., Profit Sharing Plan To [53-1] Motion To Compel Turnover of Property of the Estate by William T. Hendon; with affidavit of Dale Horst. (vgs) [EOD 11/29/99] [96-34511]
12/2/99	–	Hearing called Re: [53-1] Motion To Compel Turnover of Property of the Estate by William T. Hendon

		adjourned For 9:00 12/9/99 at Ctrm 1C Baker Crths Knox (mmd) [EOD 12/03/99] [96-34511]
12/9/99	–	Hearing called Re: [53-1] Motion To Compel Turnover of Property of the Estate by William T. Hendon; agreed order to be submitted adjourning motion indefinitely pending resolution of appeal and providing for the submission of written staus reports at 90 day intervals. (vgs) [EOD 12/13/99] [96-34511]
1/14/00	58	Order (rs), Re: Motion to Compel Turnover of Funds filed by trustee and Response; trial of this contested matter to be resolved in adv. proc. 98-3088, which is on appeal to U.S. District Court; matter is stayed pending resolution; commencing March 1, 2000 parties shall submit a status report on the appeal and continuing each ninety days reporting on status of appeal of adversary proceeding; debtor shall be prohibited from making any transactions relative to the debtor's interest in pension account; Raymond B. Yates, M.D., P.C. Pension and Profit Sharing Plan shall provide to trustee copies of

		documents evidencing current balance in Plan with such documentation to be submitted within thirty days from the date of this Order; the Plan represents that the debtor's interest is federally insured and the Plan shall maintain investments made within the Plan for and on account of debtor's interest in federally insured accounts pending futher orders by the court . (vgs) [EOD 01/14/00] [96-34511]
3/3/00	59	Status Report by Trustee William T. Hendon on the Adversary Proceeding 98-3088. (ldm) [EOD 03/06/00] [96-34511]
6/19/00	60	Status Report by Trustee William T. Hendon on the adversary 98-3088. (ldm) [EOD 06/21/00] [96-34511]
6/26/00	61	Memorandum containing Findings of Fact and Conclusions of Law Re: Notice of Appeal filed 9/13/99 in Adv. Proc. No. 98-3088. (jgm) [EOD 06/29/00] [96-34511]
6/26/00	62	Final Order By Judge Collier in accordance the the Memorandum filed 6/26/00 affirming the decision of the bankruptcy court in Adv.

		Proc. No. 98-3088. (jgm) [EOD 06/29/00] [96-34511]
7/25/00	63	Notice Of Appeal to the United States Court of Appeals for the Sixth Circuit RE: [62-1] District Court Order and Memorandum dated June 27, 2000 filed in Adv. Proc. No. 98-3088. (jgm) [EOD 08/01/00] [96-34511]
3/5/01	64	Order (rs), that the court, on its own motion, directs that counsel for the Trustee and counsel for Raymond B. Yates, M.D., P.C., Pension and Profit Sharing Plan and Raymond B. Yates, Trustee, comply with the court's January 14, 2000 Order within ten days requiring them to file a status report regarding the appeal of Adversary Proceeding No. 98-3088 . (ldm) [EOD 03/05/01] [96-34511]
3/9/01	65	Status Report by Trustee William T. Hendon on Adversary No. 98-3088. (nah) [EOD 03/12/01] [96-34511]
6/12/01	66	Status Report by Trustee William T. Hendon (sjp) [EOD 06/13/01] [96-34511]
9/27/01	67	Status Report by Trustee William T.

		Hendon (vmg) [EOD 09/28/01] [96-34511]
4/19/02	69	Judgment of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the district court re: Notice of Appeal filed 9/13/99 in Adv. Proc. No. 98-3088. (jgm) [EOD 05/01/02] [96-34511]
4/26/02	68	Status Report by Trustee William T. Hendon (ldm) [EOD 04/30/02] [96-34511]
6/5/02	70	Motion By Trustee William T. Hendon To continue Hearing On: Status Conference . (ldm) [EOD 06/11/02] [96-34511]
8/14/02	–	Hearing Re: Status Hearing Set For 9:00 8/29/02 at Ctrm 1C Baker Crths Knox (dcs) [EOD 08/14/02] [96-34511]
8/19/02	71	BNC Certificate of Service [0-0] Status Conference. (vmg) [EOD 08/23/02] [96-34511]
8/23/02	72	Motion By Debtor Raymond B. Yates in 96-34511 To continue Hearing On: ([0-0] status

		conference) . (vmg) [EOD 08/23/02] [96-34511]
8/28/02	73	Order (rs) Granting [72-1] Motion To continue Hearing On: ([0-0] status conference) by Raymond B. Yates Status Reset To 1:30 11/14/02 at Ctrm 1C Baker Crths Knox . (vmg) [EOD 08/28/02] [96-34511]
3/28/03	74	Application By Trustee William T. Hendon To Employ John A. Walker for special purposes . (sjp) [EOD 03/31/03] [96-34511]
4/4/03	75	Order (rs) Granting [74-1] Application To Employ John A. Walker for special purposes by William T. Hendon (NUNC PRO TUNC to October 1, 2002) . (sjp) [EOD 04/04/03] [96-34511]
4/8/03	76	BNC Certificate of Service [75-1] Order . (vmg) [EOD 04/10/03] [96-34511]
5/2/03	77	Assignment of Claim of Creditor NationsBank of Tennessee, N.A. to Great Plains Capital Corporation (vmg) [EOD 05/06/03] [96-34511]
6/30/03	78	Status Report by Trustee William T.

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